

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA, APPELLANT

v.

CONTAINER CORPORATION OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

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RELEVANT DOCKET ENTRIES

- 10-14-63 Filed complaint.
- 1-13-64 Answers of defendants filed.
- through
- 1-15-64
- 5-21-65 Filed stipulation dated April 22, 1965 and signed by counsel for all parties.
- 5-21-65 Filed stipulation dated April 22, 1965 as to certain documents and signed by counsel for all parties. Schedule attached thereto.
- 5-21-65 Filed further stipulation as to certain proof dated May 14, 1965 and signed by counsel for all parties; in one bound volume.
- 7-2-65 Memorandum—of plaintiff before trial, with certificate of service.
- 11-30-65 Defendants' statement of contentions—two copies delivered to D.A.
- 11-30-65 Defendants' objections to plaintiff's evidence—two copies also delivered to D.A.
- 12-16-65 Plaintiff's objections—to defendant's evidence, with certificate of service.
- 12-20-65 Filed deletions from depositions designated by the plaintiff.
- 12-20-65 Filed plaintiffs materiality of depositions.
- 1-14-66 Order of Proof (list of exhibits)—of plaintiff.
- 1-20-66 Contentions—of Continental Can Company, Inc.
- 1-20-66 Further contentions—of defendant International, with certificate of service.
- 1-21-66 Further contentions—of defendant Container Corp. of America, with certificate of service.
- 1-24-66 Contentions—of defendants, Albermarle Paper Mfg. Co., Dixie Container Corp., Dixie Container Corp. of N.C., Inland Container Corp., The Mead Corp., Miller Container Corp., Owens-Illinois Glass Co.
- 1-24-66 Contentions—of defendants, Tri-State Container Corp., Union Bag-Camp Paper Corp., West Virginia Pulp and Paper Co., and Weyerhaeuser Co.
- 1-24-66 Designation of deposition of testimony—of defendant Inland Container Corp.
- 1-24-66 Additional contentions—of defendant, St. Joe Paper Co. with certificate of service attached.

- 1-24-66 Further statement of contentions—of defendant, Crown Zellerbach Corp.
- 1-24-66 Designation of deposition testimony—of defendant, Union Bag-Camp Paper Corp.
- 1-24-66 Designation of deposition testimony (as corrected)—of defendant, Owens-Illinois Glass Co.
- 1-24-66 Amended designation of deposition testimony—on behalf of certain defendants; Continental Can Co., Inc., Crown Zellerbach Corp., The Mead Corp., St. Joe Paper Co., International Paper Co., Container Corp. of America, West Virginia Pulp and Paper Co., Dixie Container Corp., Dixie Container Corp. of N.C., Tri-State Container Corp., St. Regis Paper Co., Miller Container Corp., Albemarle Paper Mfg. Co., Weyerhaeuser Co., and Carolina Container Co.
- 1-24-66 Designation of deposition to be received as evidence—by defendant Carolina Container Co.
- 1-24-66 Separate contentions—of defendant, Carolina Container Co.
- 1-24-66 Supplemental Contentions—of defendant, St. Regis Paper Co. with certificate of service attached.
- 1-24-66 Memorandum of points and authorities—of plaintiff, with certificate of service.
- 1-26-66 Trial by court—called before Judge Stanley of Greensboro.
- 2-1-66 General objections—of Owens-Illinois Glass Company to portion of plaintiff's evidence, with certificate of service.
- 4-18-66 Deposition testimony introduced in evidence—in accordance with stipulation approved by Judge Stanley, 4-15-66. Court exhibits marked as follows:
 Volume I containing pages A-1 through A-197 as Court Exhibit 4;
 Volume II containing pages A-198 through A-405 as Court Exhibit 5;
 Volume III containing pages A-406 through A-613 as Court exhibit 6;
 Volume IV containing pages A-614 through A-777 as Court exhibit 7.
- 5-3-66 Plaintiff's proposed findings of fact—with certificate of service.
- 5-3-66 Defendants proposed findings of fact—with certificate of service.

- 6-2-66 Plaintiff's memorandum—in opposition to defendants' evidential objections dated 5-18-66, with certificate of service.
- 6-2-66 Plaintiff's post-trial brief—with accompanying appendix, with certificate of service.
- 10-14-66 Post-trial brief—of defendant.
Memorandum—of defendants in support of proposed findings of fact and in opposition to certain of plaintiffs' proposed findings of fact. 2 Volumes.
Documentary supplement—of defendant with indices—2 Volumes.
Indices—of defendant—2 Volumes.
Certificate of service—of defendant.
- 1-11-67 Oral arguments—called before Judge Stanley in Greensboro.
- 8-31-67 Findings of fact & conclusions of law—of Judge Stanley, ruling that plaintiff is not entitled to injunctive relief and defendants are entitled to a judgment dismissing the complaint with prejudice.
- 8-31-67 Judgment—signed by Judge Stanley, denying relief of plaintiff and dismissing complaint with prejudice. Each party to bear its own costs.
- 10-30-67 Notice of appeal—of U. S. to Supreme Court of the United States.

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted against the defendants named herein under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. § 4), entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of that Act (15 U.S.C. § 1).

2. Each of the defendants transacts business and is found within the Middle District of North Carolina.

II

Definitions

3. As used herein, the term "corrugated containers" means all kinds of corrugated shipping containers made of kraft paperboard.

4. As used herein, the term "Southeastern United States" means the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky.

III

The Defendants

5. The corporations listed below are named as defendants herein. Each of these defendants is organized and exists under the laws of the state, has its principal place of business in the city, and has plants in the Southeastern United States as indicated below:

Name	State of Incorporation	Principal Office	Plants in Southeast
Container Corporation of America	Delaware	Chicago, Ill.	Fernandina, Fla. Memphis, Tenn. Nashville, Tenn. Chattanooga, Tenn. Knoxville, Tenn. Lexington, Ky. Louisville, Ky. Winston-Salem, N.C. Richmond, Va.
Albemarle Paper Manufacturing Company	Virginia	Richmond, Va.	
Carolina Container Company	North Carolina	High Point, N.C.	High Point, N.C.
Continental Can Company, Inc.	New York	New York, N.Y.	Atlanta, Ga. Martinsville, Va. Richmond, Va. Atlanta, Ga. Greenville, S.C. Miami, Fla. Tampa, Fla. Richmond, Va.
Crown Zellerbach Corporation	Nevada	San Francisco, Calif.	
Dixie Container Corporation	Virginia	Richmond, Va.	
Dixie Container Corporation of North Carolina	Delaware	Morganton, N.C.	Morganton, N.C.
Inland Container Corporation	Indiana	Indianapolis, Ind.	Winchester, Va. Macon, Ga. Orlando, Fla. Rome, Ga. Louisville, Ky. Auburndale, Fla. Georgetown, S.C. Atlanta, Ga. Durham, N.C. Louisville, Ky. Memphis, Tenn. Miami, Fla. Roanoke, Va.
International Paper Company	New York	New York, N.Y.	
The Mead Corporation	Ohio	Dayton, Ohio	
Miller Container Corporation	Virginia	Roanoke, Va.	
Owens-Illinois Glass Company	Ohio	Toledo, Ohio	Atlanta, Ga. Miami, Fla. Memphis, Tenn. Jacksonville, Fla. Salisbury, N.C. Birmingham, Ala. Memphis, Tenn. Port St. Joe, Fla. Portsmouth, Va. Jacksonville, Fla. Atlanta, Ga. Birmingham, Ala. Elizabethton, Tenn.
St. Joe Paper Company	Florida	Jacksonville, Fla.	
St. Regis Paper Company	New York	New York, N.Y.	
Tri-State Container Corporation	Tennessee	Elizabethton, Tenn.	
Union Bag-Camp Paper Corporation	Virginia	New York, N.Y.	
West Virginia Pulp and Paper Company	Delaware	New York, N.Y.	
Weyerhaeuser Company	Washington	Tacoma, Wash.	Lakeland, Fla. Jamestown, N.C. Savannah, Ga. Spartanburg, S.C. Gastonia, N.C. Richmond, Va. Florence, Ala. Tampa, Fla. Charlotte, N.C. Lynchburg, Va. Newton, N.C.
The Waterbury Corrugated Container Co.	Connecticut	Waterbury, Conn.	

6. The acts alleged in this complaint to have been done by each defendant were authorized, ordered, or done by the officers, agents, employees, or representatives of such defendant while actively engaged in the management, or control of its affairs.

IV

Trade and Commerce involved

7. Corrugated containers are made of kraft paperboard which is chiefly characterized by its strength. Manufacturers produce corrugated containers in various shapes and sizes according to the needs of their customers. While corrugated containers are shipped as flat board they have been previously cut and prepared for folding into the desired shapes and sizes for use as containers.

8. Corrugated containers are used for shipment of a wide variety of products. They are widely used in the Southeastern United States for shipment of textiles, tobacco products, furniture, fruits, and poultry products. Virtually all corrugated containers sold in the Southeastern United States are made to customer specification. The few that are not are primarily sold to shippers of fruit and eggs.

9. During the period of time covered by this complaint, each of the corporate defendants has sold and shipped substantial quantities of corrugated containers to customers located in states other than the state in which said corrugated containers were manufactured. Total sales of corrugated containers manufactured in the Southeastern United States by the defendants amount to approximately \$200,000,000 per year, and represent in excess of 90% of all sales of such products in the Southeastern United States.

V

Offense Charged

10. Beginning at least as early as 1955, the exact date being to the plaintiff unknown, and continuing up until the date of this complaint, the defendants have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in cor-

rugated containers, in the Southeastern United States, in violation of Section 1 of the Sherman Act. Such unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

11. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers.

12. For the purpose of effectuating the aforesaid combination and conspiracy the defendants have done those things which as hereinbefore charged they combined and conspired to do.

VI

Effects

13. The combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated containers to purchasers located in the Southeastern United States.

VII

Prayer

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the defendants, and each of them, have engaged in a conspiracy and combination in unreasonable restraint of the aforesaid trade and commerce in corrugated containers as hereinabove alleged, in violation of Section 1 of the Sherman Act.

2. That each of the defendants, its successors, assignees, and transferees, and the respective officers, agents, and employees thereof, be perpetually enjoined and restrained from:

- (a) Continuing to carry out, directly or indirectly, the combination and conspiracy hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from

adopting or following any practice, plan, program, or device having a similar purpose or effect;

- (b) Furnishing to, or requesting from, any other manufacturer of corrugated containers, by reference to a pricing manual or by any other means, any information concerning prices, terms, or conditions for the sale of corrugated containers to any specific customers;
- (c) Entering into any agreements, arrangements, or understandings with any other persons to eliminate or suppress competition in the sale of corrugated containers.

3. That the plaintiff have such other, further, and different relief as the Court may deem just and proper in the premises.

4. That the plaintiff recover the costs of this suit..

Dated:

Robert F. Kennedy, Attorney General. Robert L. Wright, First Assistant to the Assistant Attorney General. Lewis Bernstein, Attorney, Department of Justice. —, —, United States Attorney.

Wharey M. Freeze. John L. Sliney, Attorneys, Department of Justice.

ANSWER

Defendant Container Corporation of America, answering the Complaint heretofore filed herein, says and alleges:

First Defense:

1. Denies each and every allegation contained in paragraph "1" of the Complaint, except that it admits that the Complaint is purportedly brought under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U.S.C. § 4 to prevent and restrain alleged violation by the defendants of Section 1 of that Act (15 U.S.C. § 1).

2. Admits the allegations of paragraph "2" of the Complaint as to it and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "2" as to the other defendants.

3. Denies each and every allegation contained in paragraph "3" of the Complaint, except that it admits that said paragraph sets forth a definition by plaintiff of the term "corrugated containers".

4. Denies each and every allegation contained in paragraph "4" of the Complaint, except that it admits that said paragraph sets forth a definition by plaintiff of the term "Southeastern United States".

5. Admits the allegations contained in paragraph "5" of the Complaint as to it, and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph "5" as to the other defendants.

6. Denies each and every allegation contained in paragraph "6" of the Complaint.

7. Denies each and every allegation contained in paragraph "7" of the Complaint, except that it admits that corrugated containers are made of kraft paperboard, one of the characteristics of which is its strength, and of other materials, that manufacturers produce corrugated containers in various shapes and sizes according to the needs of their customers, and that corrugated containers are shipped as flat board after having previously been cut and prepared for assembling into certain shapes and sizes for use as containers.

8. Denies each and every allegation contained in paragraph "8" of the Complaint, except that it admits that corrugated containers are used for shipment of a wide variety of products, are widely used in the Southeastern United States for shipment of textiles, tobacco products, furniture, fruits, poultry products and other products, that most of the corrugated containers sold in the Southeastern United States are made to customer specifications and that some of the standard corrugated containers are sold to shippers of fruit and eggs.

9. Admits the allegations contained in the first sentence of paragraph "9" of the Complaint as to it and denies that it has any knowledge or information sufficient to form a belief as to the truth of any of said allegations as to the other defendants, and admits the allegations contained in the second sentence of said paragraph "9".

10. Denies each and every allegation contained in paragraph "10" of the Complaint.

11. Denies each and every allegation contained in paragraph "11" of the Complaint.

12. Denies each and every allegation contained in paragraph "12" of the Complaint.

13. Denies each and every allegation contained in paragraph "13" of the Complaint.

Second Defense:

14. On April 23, 1940 a Consent Decree was duly entered by the United States District Court for the Southern District of New York in an action entitled "*United States of America, Plaintiff, against National Container Association, et al., Defendants*", Civil Action No. 8-318, to which action both the plaintiff herein, United States of America, and defendant Container Corporation of America, were parties. A true copy of said Consent Decree is annexed hereto, made a part hereof and marked Exhibit "A". Said Consent Decree is a valid and subsisting decree and is binding upon the plaintiff and this defendant herein.

15. To the extent that the Complaint herein is based upon acts done by defendant Container Corporation of America in reliance upon and in accordance with said Consent Decree, the Complaint herein and the maintenance of this action constitute a collateral attack on the said Consent

Decree entered by the United States District Court for the Southern District of New York, and plaintiff is precluded and estopped from asserting that such acts constitute engaging in a combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act. Plaintiff is foreclosed from seeking any relief in this Court with respect to such acts additional to that provided for in said Consent Decree, and this defendant pleads said Consent Decree in bar of plaintiff's right to such relief prayed in this cause.

Third Defense:

16. The Complaint fails to state a claim upon which relief may be granted against defendant Container Corporation of America.

WHEREFORE, defendant Container Corporation of America respectfully prays the Court:

(1) That the relief prayed in the Complaint not be granted and that this action be dismissed;

(2) For such other and further relief as to the Court may seem just and proper.

Whitney North Seymour, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. William J. Manning, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. R. M. Stockton, Jr., 610 Reynolds Building, Winston-Salem, North Carolina. Telephone PArk 5-2351. Attorneys for Defendant Container Corporation of America.

Of Counsel: Simpson Thacher & Bartlett, 120 Broadway, New York 5, New York. Telephone WOrth 4-1900. Hudson, Ferrell, Petree, Stockton and Robinson, 610 Reynolds Building, Winston-Salem, North Carolina. Telephone PArk 5-2351.

I certify that I have served this Answer upon the plaintiff, United States of America, by delivering three copies to W. H. Murdock, Esq., United States Attorney for the Middle District of North Carolina, at his office at the United States Post Office Building, Greensboro, North Carolina.

Dated: Winston-Salem, North Carolina, January 15,
1964.

R. M. Stockton, Jr., 610 Reynolds Building, Winston-
Salem, North Carolina.

[Tr. 1]

CONFERENCE WITH ATTORNEYS

Greensboro, North Carolina, May 14, 1965,

3:00 o'clock P. M.

APPEARANCES:

William H. Murdock, United States Attorney, Lewis Bernstein, Esq., and Wharey M. Freeze, Esq., Department of Justice, appearing on behalf of the Plaintiff.

Upon inquiry by the Court, it was determined that all Defendants were represented by counsel as appears of record.

A conference with attorneys in the above-styled case was had before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Post Office Building, Greensboro, North Carolina, on the 14th day of May, 1965, commencing at 3:00 o'clock P. M.

.

[Tr. 14] Mr. Johnson: If the Court please, I represent Continental Can, one of the defendants in this case. I have no authority to speak for any of the other defendants and I do not purport to. However, I have served as informal coordinating chairman in the attempt to work out the procedures with the Government on behalf of all of the defendants. In the sense that we have brought the stipulations to a conclusion, I think in that sense I can speak for the defendants, if no other.

I think at this point we have to start talking a little bit about this case, the nature of the case rather than just the procedures which we are concerned with, in order to get some understanding of what the problems of preparing are and what the scope of the defendant's problems are in this case.

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[Tr. 22] Mr. Bernstein: I believe that it's clear from Mr. Johnson's presentation that what is at issue here is a legal question, not a factual question, because the facts have been stipulated. So that whether or not any one of these docu-

ments is admissible and the relevancy would have to be addressed to the Court; necessarily involved in that is a legal argument. It seems to me that although the pre-trial procedures and the Rules of the Court are designed to expedite trials, to get them to trial as quick as possible, and to save time at trial, the Court is not really saving any time at all when it hears legal arguments in bits and pieces in the form of pre-trial conferences in connection with procedures. But the appropriate time to hear legal arguments is when the record is closed. All the objections would be reserved, the [Tr. 23] Government would contend, that all of this matter be objected to by each of the defendants with the right to reserve and the question of relevancy considered after legal arguments are made.

Now what Mr. Johnson is suggesting is that the Government now provide them with a detailed specification of what it contends each statement and each document which it proposes to offer in evidence is relevant to its case or what each statement a witness made on a deposition, how that moves the case along. That is really the function of the argument at the trial; that is really the nature of the trial. Therefore, I suggest that at some point or other the defendants have to make a decision. They know all of the material that the Government is going to introduce into evidence. They reserve their objection—they object to all of it as to relevancy; there is no objection as to competency except perhaps that a document admissible as to one defendant may not be considered as to another defendant, and that kind of objection. But when the Court considers that objection, it would necessarily have to do it in the context of the whole case and in the context of the issues and in the context of the legal argument.

Now the plaintiff's contentions, when it gets down to Paragraph 6 and Paragraph 7, that is the gist of the whole case. Mr. Johnson would have the Court believe that this is [Tr. 24] a very complicated, drawn-out matter; and the Government suggests that this is a very simple legal question—a difficult question, but it is not this complicated, complex factual question that the defendants would have you believe. Paragraph 6 contends—it asks the Court to infer from this business practice, because continuously and over a long period of time information was obtained in this fashion, the Court can infer that there was an understand-

ing or everyone understood that upon request the information would be furnished.

Now Paragraph 7 is the gist of the Government's case; it's the whole case. Contention 7 is that the purpose for which this information was exchanged was to restrict price competition among the defendants; and the Government contends that the Court can find this purpose from the conduct of the defendants as declared in the documents, in the memoranda that they prepared contemporaneously, and the letters that they exchanged intracompany or intercompany, and from the testimony of the officials of these defendants in their depositions when they related how they did business, what their contacts were with their competitors, what the reasons were, why they gave this information and why they received this information.

Those are the facts upon which the Government asks the court to infer that this purpose was not, as has been contended here today, routine business practice that has continuously been carried on in every industry, but the purpose [Tr. 25] was an unlawful purpose: to restrict competition. Therefore, the Government contends that the Court can only decide that in the context of taking all this material, opening the record, taking this material into evidence, reserving the objections of the defendants to all of the documents or all of the depositions, reserving that, having the argument; the Government will file its pre-trial brief at a specified time before the trial begins, at which it will detail which statement of which witness is relevant and significant to the question showing the ulterior purpose of the defendants, which paragraph in which document, and the documents will be annotated and the page and paragraph of the deposition will be annotated. But that is trial procedure, not pre-trial procedure. And with that before them, the defendants are then prepared for their legal argument, legal argument that this conduct does not constitute a violation.

I respectfully suggest that following any procedure other than following a trial date in September, scheduling additional pre-trial conferences and additional conferences and getting into that with 17 defendants, will not save time but it will just delay the ultimate disposition in this matter.

[Tr. 28] The Court: Well, Mr. Johnson, I believe if you can if you will tell me what time we have involved—I'm afraid we will not accomplish anything by getting into the merits at the moment of this controversy. But I was trying to suggest a time that you consider would be fair to all the defendants for the Government to file this, and then we will start thinking about a schedule for the future. Whether that [Tr. 29] schedule will be December or January, that's quite immaterial at the moment. Let's do what appears to be fair to both sides and see if we can agree on a schedule, and we will take such time as is necessary to accomplish that.

Mr. Johnson: I would suppose that the defendants, having in mind their many different interests and cross-interests, would need three months after the time this document that the Government is talking about was furnished them in order for them to determine what of the documents, what of the material that is now stipulated they would want to use and what objections they would want to make to the material that is being offered. I can't overemphasize the problem of communication relationship between various defendants. Of course, one way to do it would be to throw it all out to the Court.

The Court: Well, let's not talk about that.

Gentlemen, believe me, I commend both sides for the spirit with which you have approached this problem down to now and I hope you will continue, and everything I have said has been in that spirit, to see if we can't, in fairness to both sides.

Mr. Johnson: We appreciate that, sir.

The Court: And the Court deeply appreciates the manner in which both sides have approached this. I realize that the defendants, 19 or 17 or whatever number is still in [Tr. 30] the case, all operate different businesses in different sections of the country and everybody is doing something a little different from the other; and having different counsel and different ideas as to the approach, I understand that you have had quite a problem. That's the reason why I say I appreciate it and why we have tried to go along with fixing these schedules that are realistic and that are fair, bearing in mind that problem.

But let's see what Mr. Bernstein has to say about—
Well, let me ask you first, Mr. Johnson, how long now do

you think the defendants would reasonably require to designate the parts of the depositions heretofore taken which the defendants desire to introduce into evidence? Now I know that your stipulation calls for 15 days before trial, but actually without regard to this.

Mr. Johnson: Well, I am at a disadvantage in trying to answer that because the Government has now designated several hundred pages of testimony which it says it wants to use. I don't know what they intend to use it for; I don't know what theory they intend to offer it. A great part of that is done against my client; it's other people talking. I am in the position of having a very vague charge, that is: Because a trade practice exists, it must necessarily be an agreement; and if it is necessarily an agreement, the purpose must be to restrict competition. I don't know any more than [Tr. 31] that. What I need to have before I can get down to serious determination even on behalf of my own client to try to decide what I want to offer of the depositions, I need a much better understanding than I now have of what the Government is using all these nine hundred odd pages of material for.

Mr. Bernstein: Perhaps I could clarify that right at this moment, Your Honor. It's this simple proposition: The Government contends what whatever the pages in the depositions and whatever the contents of the documents are are offered in evidence to prove that the purpose for which this information was exchanged was to restrict price competition among the defendants. It's as simple as that. That is the purpose and this is the way the Government is going to prove that this was the purpose of the defendants, through these pages in the depositions.

Now insofar as the depositions are concerned, I can tell the Court and defense counsel quite frankly, we have designated in effect the entire deposition, keeping out those items that are chaff, that were in the nature of discovery that didn't go anywhere, that didn't evidence anything. I would imagine that some portions of that the defendants might wish to have in, but I predict that there is not too much of that.

So I don't think that the burden is quite the same. The defendants are apprised of what the Government's [Tr. 32] contentions are. It contends that these documents and the

depositions are all offered for the purpose of showing that the defendants' purpose in exchanging this information by the business practice was to restrict competition.

Now taking up Your Honor's suggestion before that perhaps it would be helpful for the Government to prepare its pre-trial memorandum first, then that will eliminate that argument; there is no question about that. And I am contemplating the idea that perhaps that might be the fastest way of doing it. If the Government—if we fix the time now for that to be the next task, the Government will submit its memorandum, pointing to chapter and verse of how it contends that the purpose of this exchange of information was to restrict competition. Then, if 60 days thereafter, the defendants will designate the documents that they intend to rely on and the documents—the portions of the depositions that they wish and the defendants' contentions, I would think that the matter is ready for trial. I don't see why it should take more than 60 days when the Government not only, not only submits all of its documents, all of its testimony, but in addition shows the significance of the testimony.

The Court: Well, of course, this is the first time we have had any discussion here of the theory of the Government's case. I have read the pleadings. This, of course, is the first time I have seen the Government's contentions. [Tr. 33] But it would seem, Mr. Johnson—and when I speak to you, I speak to all of the defendants—that we have a factual problem first: Does this evidence prove or tend to prove that the purpose of whatever agreement there was between the defendants or whatever they did was to restrict price competition? The Government says they contend that it does tend to prove that and that the Court should infer it. But that is a factual problem which you and your associates and counsel for all of the defendants will at the appropriate time urge that it does not tend to establish that fact.

Now what do you have to say to what Mr. Bernstein has proposed? That he will first submit to you a detailed analysis of all of the evidence that he has designated, that is, all of the exhibits that he has designated and all of the deposition testimony that he has designated, his entire case; and he points out the significance of each document as it tends to prove the ultimate contention: that the Court should infer that the purpose of the action of the defend-

ants was to restrict price competition, or contentions to that effect. Do you have all of that in your possession?

Mr. Johnson: Well, first with respect to your comment that this is a factual question, I don't disagree with that but before we get to that we do have the question of the relevance of any material that he has got and proposes to offer to each of 17 different defendants. Now whether this is [Tr. 34] a great problem or not, I don't know.

The Court: What suggestion do you have as to how that can be handled? Until you see the evidence and maybe you have to see it in its totality, you have to see it all, as to whether or not it has any relevance or significance at all; and actually, being a non-jury matter, if it is received in evidence and has no relevance to the issues, why it just amounts to so many papers in the record. Now I am not suggesting by that that you should open the door and permit everything real and imaginary to come in, but it's a most difficult thing to rule on the relevancy of a document until it is considered in the context of the other documents, particularly where a conspiracy is charged. It might appear to be totally irrelevant at one stage but at another stage it might appear to be totally relevant.

Mr. Johnson: I'm not sure whether the Government has or has not yet given up the theory of conspiracy. This is probably one of the reasons why we need to get more explicitly their contentions. However—

Mr. Bernstein: I can make that clear right now, Your Honor, make that clear right now.

The Court: All right.

Mr. Bernstein: The Government is going to contend that each of these documents and each of these depositions should initially be received only as against the defendant who [Tr. 35] wrote the document or received the document or made the statement; and then after it's all received, the Government is going to move that all of this evidence be received as against all defendants on the ground that there was a combination, there was a concerted conspiracy in the sense that there was a concerted effort to restrict competition. There was a common purpose, a common objective: in that sense, a conspiracy; not a conspiracy in the sense that they met in a dark room and shook hands and agreed this was what was going to be done.

Now this is all a legal question and the Government

contends that each defendant is put on notice now by the Government that it intends to move that all of this evidence, whether it was made by a specific defendant or not, be considered against that defendant after all the evidence is in as against each individual defendant, because the Government will contend that this testimony in the depositions, these documents, will show as to each a participation in a concerted effort to restrict price competition and therefore the evidence should be admissible against all.

[Tr. 1]

December 20, 1965, 2:00 o'clock P. M.

APPEARANCES:

William H. Murdock, United States Attorney, Lewis Bernstein, Attorney, Department of Justice, and Wharey M. Freeze, Attorney, Department of Justice, appearing on behalf of the Plaintiff.

Upon inquiry by the Court, it was determined that all Defendants were represented by counsel as appears of record.

A conference with attorneys in the above-styled case was had before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Post Office Building, Greensboro, North Carolina, on the 20th day of December, 1965; commencing at 2:00 o'clock P. M.

[Tr. 9] Mr. Johnson: If the Court please, at the time we set about to prepare the contentions of the defendants as required by the Court's order of May 12th, we were confronted with the problem of just what the defendants' contentions would be, how they could be stated in the light of the Government's designation of the evidence, and the material which they had indicated they were prepared to offer. As a result, in preparing our contentions we stated that we might have further separate different contentions depending on the ruling with respect to the admissibility of the evidence or depending on our ability to resolve our objections with the Government. This latter was not possible to do.

I would like to go back into the pre-trial conferences for a moment, going first to the very first pre-trial conference of January 28, 1964. At that time [Tr. 10] Mr. Bernstein, for the Government, addressing the Court, said:

"It is the Government's desire, proposal, or suggestion that after these depositions are taken and both parties have had the opportunity to hear the witnesses testify as to what the facts are as to how the defendants did business at the same time, then the Government would submit to the defendants proposed find-

ings, which could be either proposed stipulations or proposed requests for admissions, so that the defendants could indicate which of these facts they propose to controvert or which of these facts they would deem admitted for the purpose of this lawsuit. At that point, the issues could then be narrowed or at that point the defendants could then decide whether they need certain discovery or certain further facts to bring out the defense."

Later in the same conference Mr. Bernstein says "these depositions—" Let me start at the beginning of the sentence:

"It is the Government's preference, Your Honor, that these depositions be proceeded with as soon as possible, as you outlined, in February [Tr.11] and March; and immediately after that, if the defendants wish, before they can determine whether they want discovery or what has to be done, the Government would be prepared to submit its proposed findings on that case or whatever you want to call it, proposed stipulations or requests to admit, whatever form it takes; but it would be the substance of the plaintiff's affirmative case. This would give the defendants the opportunity to determine whether they want to discover evidence in opposition to it or whether they want to rely on this evidence in the legal matter. Then we can proceed with the issues on the Government's affirmative case."

A little bit later, at the next pre-trial conference—maybe not the next, but the pre-trial conference in February, on the 25th of February, 1964, Mr. Bernstein addressed the Court:

"Now with respect to the items in Rule 22—" That's on Page 9. "Now with respect to the items in Rule 22, with respect to item one, the time reasonably required for the completion of discovery, it was the Government's statement to the defense counsel this morning—and there appeared to be no disagreement with it—the Government [Tr.12] proposes that after a cross-examination and a redirect-examination has been com-

pleted on the part of the Government, the Government will then within a reasonable time thereafter furnish the defendants with its proposed findings of fact so that there would be an opportunity to determine what factual matters are actually at issue. It was the Government's thought that at that time counsel would meet again and make a further report to the Court, as to what time is reasonably required for the completion of discovery."

Pursuant to the arrangements made in those pre-trial conferences, the depositions of 35 or so representatives of the defendants were taken in March of 1964; and following out the suggestion made by Mr. Bernstein at that time and then approved by the Court, the Government did on April 21 send a letter to all defense counsel. This letter dated April 21, 1964, reads:

"Gentlemen: Attached hereto are forty proposed findings of fact submitted to you in accordance with the provisions of the pre-trial conference of February 25, 1964, in the above matter. These do not, however, represent all [Tr. 13] of our proposed findings. We expect to submit additional findings to you no later than April 30, 1964.

"We will look forward to having your reactions to these and our additional proposed findings of fact after you have had an opportunity to study them."

On April 30, 1964, the Government addressed a letter to all defense counsel. This letter reads:

"Attached hereto are the additional findings of fact referred to in our letter of April 21, 1964. Sincerely yours."

There followed, Your Honor, many months of work on stipulations. During this period a group of counsel representing the defendants met, first, with themselves many times, with representatives of other counsel, in an attempt to reconcile first their differences; then they met with representatives of the Government in meeting after meeting to work out stipulations which were based on these proposed findings of fact of the Government. The stipulations which

were worked out represented the distillation of the factual matter that was in the depositions insofar as the Government had indicated was material to this case. It represented reconciliation of inconsistencies between [Tr. 14] the defendants, between the different witnesses, and it represented the filling in of a great deal of information that was not in the depositions, but from our own information. It represented very careful wording of stipulations in a form that we could agree to, that we were willing to accept.

During the course of these negotiations there were two subjects which the Government had indicated in its April letters as I referred to which the defendants and the Government were not able to agree on any stipulation. These related to a meeting of some representatives of some defendants that was alleged to have been held in the Marriott Hotel somewhere in Virginia, and a meeting that is alleged to have taken place in Richmond, Virginia. With respect to these two fact situations we do not now raise objection because we admit that they were the subject of negotiations; we were not able to arrive at any stipulation with respect to them.

There was one other point that was proposed in the Government's proposed findings of fact that was not dealt with at that time. It was a conclusory paragraph to the effect that there was an agreement amongst the defendants. While it was not dealt with specifically as a stipulated fact, it was dealt with in the stipulations. [Tr. 15] In the Further Stipulation As to Certain Proof it was agreed that the plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidences an express agreement to exchange price information in order to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer that to exchange information as to the most recent quoted price of corrugated containers and that from such agreement together with such facts, the Court may infer an agreement to restrict competition. The defendants deny that there was any agreement to exchange price information or to restrict competition, and contend that no such agreement or agreements can be inferred.

Notwithstanding this elaborate stipulation, the many hours work that went into this, the attempt to narrow the factual disputes down to an absolute minimum, the Gov-

ernment now proposes to introduce in this record the raw material from which these stipulations were prepared. They propose, Your Honor, that you should do now, begin the very thing that we spent all of these thousands of hours working to do. They propose also that they should determine at their pleasure when they please what relevance, what materiality, this has to [Tr. 16] this litigation.

[Tr. 20] Here we are confronted with the Government's theory. With having worked out a stipulation, they propose that Your Honor should draw the conclusions from this material which we have been working to stipulate over these many months. In our two conferences a few days [Tr. 21] ago that Mr. Smith referred to, conferences with the Government, they did agree that they would delete very few bits and pieces from their designation. However, Mr. Bernstein agreed with us at the time that any deletions that he would make did not go to the essence of our objections here. In other words, the things that he was proposing to delete were things that he had concluded for one reason or another he didn't propose to use, but he was not willing and would not go to the extent, he would not agree with our objections that material which has been stipulated was not the proper subject of evidence at this time.

It's our contention that the proposed extracts from the depositions which the Government now proposes to introduce are clearly immaterial since the April 1964 proposed findings of fact in this case purported to be the Government's whole case. Up until very recently it appeared as if that was also the Government's view of the case. As recently as May 1965 in the pre-trial conference here, Mr. Bernstein, addressing the Court, says:

"I believe that it's clear from Mr. Johnson's presentation that what is at issue here is a legal question, not a factual question, because the facts have been stipulated."

[Tr. 22] Apparently somewhere the Government has got cold feet on what their theory was and now proposes additional material and will not be willing to rely on the stipulations that were so carefully worked out.

Our position with respect to the stipulations is spelled out at some length in our objections. Just in summary of them, they are these: that stipulations are favored in law as a means of simplifying cases, that they are controlling, that they are obviously the results of compromise, that they do cover the Government's theory of the case, that material which relates to stipulated material should be excluded.

[Tr. 25] Mr. Bernstein: May it please the Court, if we were to objectively analyze the position enunciated by Mr. Johnson, I think we must conclude that his objections are based on two grounds. His first ground is that the Government is estopped from offering the [Tr. 26] depositions, and he relies on the Burstein case and all the other cases in his memorandum for the proposition that once matters have been stipulated no further evidence can be used to contradict them or to controvert them, nor can the Court make a finding contrary to the facts that the parties stipulated.

The Government has no quarrel with that principle of law. The Government does not offer any one of the portions of these depositions for the purpose of contradicting any of the facts that it has stipulated has been deemed proved. The purpose of the depositions or the portions of the depositions is to supplement those facts that have been agreed upon in broad outline and to provide some flesh to the skeleton that the parties have agreed to, or to clarify or to make more comprehensible to the trier of the facts as to what the conduct of these parties was.

Therefore, the Government taking the position that there is no legal basis for an estoppel, the question then boils down to one of materiality; and that is why the Government took the position that it did before that the question of whether the portions of the depositions are material should only be decided by the Court after there is considered the evidence at the trial. For example, the cup of coffee that Mr. Johnson [Tr. 27] made much of and reiterated in portions of the testimony, they referred to the cup of coffee. Now at the trial we are prepared to argue, when these matters are presented, that it is very important, the cup of coffee incident, because it demonstrates that although those

witnesses who profess no knowledge of anything about the meeting except the cup of coffee were all talking about the same meeting at DiMizio's Restaurant, and the man who did remember said that the purpose of the meeting was to determine how the customers were receiving the increased prices on set-up charges.

Now that stipulation merely provided that on July 20, 1959, there was a meeting at DiMizio's Restaurant in Salisbury, North Carolina, at which representatives of certain named defendants were present and at which some of them exchanged views as to how the trade had accepted increase in set-up charges. Now that's the broad skeleton of it. The depositions will identify the particular people who were there, and the cup of coffee indicates that the men who were there who said they didn't know anything about it were talking about the same meeting; and the purpose of that bit of evidence is to show that the very same people who were at that meeting discussing acceptance by customers of set-up charges were the same people who were giving [Tr. 28] their competitors the latest information as to what price they had quoted a customer for a custom-made container or what price they had charged a customer for a custom-made container. And all of this is designed to show that when those same individuals were giving that information and exchanging that information, they were doing it for the general purpose of reducing competition, because it was part of their overall conduct that they displayed in DiMizio's and other places of having uniform pricing conduct. They were meeting to discuss activities that would enable them to make their pricing decisions in compatibility with their competitors and thereby reduce competition.

Now I do not desire nor propose nor do I think it's appropriate at this time to burden the Court with all of the elements of substance concerning this case. I merely use that to show that there are extensive legal arguments involved in the question of whether or not it is material to go into these matters, and the time for that is at the trial.

[Tr. 32] That is the only ground for objection, relevancy or materiality, not estoppel. The stipulation did not provide

that no portion of the depositions to which stipulations have been made on the subject shall be received in evidence because they relate to the same subject matter. The only objection reserved was materiality and relevancy. And it's for that reason that the Government contends that the determination of whether these portions of the depositions should be received in evidence depends only—only—on whether or not they are material.

Now with respect to that we had several conferences with defense counsel and the Government stated their position, stated that it was not an estoppel. It stated, however, that because the Government desired, and it was to the best interest of all the parties, to resolve as many issues as possible, the Government stated that without yielding at all on its position that it was not estopped from offering any portions of the depositions in evidence—the only [Tr. 33] question would be materiality and that is a question related to the trial—it would, nonetheless, review each portion of the depositions to which the defendants had made objections, and those portions are designated in the Defendants' Objections to Plaintiff's Evidence, Appendix A.

The Government then, after reviewing all of those portions of the depositions referred to in Appendix A and B, prepared a list of those portions of the depositions that it proposed to withdraw and not offer in evidence—rather than withdraw, not offer in evidence—so that the area of the argument about the particular line of the particular witness's testimony would be narrowed somewhat. The Government has distributed to the defendants this morning a list dated December 17, 1965, containing the deletions from the depositions designated by the plaintiff, and with Your Honor's permission I'll submit that to the Court at this time. That narrows it somewhat but it does not cure the problem.

I overheard some counsel for the defendants state that he had not received that. I should clarify it. I delivered that to Mr. Smith this morning at the airport, and therefore it may be possible that distribution has not been made; but I gave it to Mr. Smith [Tr. 34] this morning.

On Page A-6 and A-7 of the Defendants' Objections to Plaintiff's Evidence, all of the portions of the depositions

indicated there have been eliminated by the Government except Cox's testimony on Page 18, Lines 1 to 9; and that is an example of the kinds of things that have been done.

Now with respect to the portions of the testimony that have not been deleted by the Government, the Government has prepared and has distributed to the defendants, through Mr. Smith in the same manner this morning, a document which it calls "Materiality of Depositions," and with Your Honor's permission I will submit that to the Court at this time, not for filing but for—not for the purpose of formal filing, but for the purpose of discussion here at this pre-trial conference, because the Government proposes to file a formal paper within the next day or so containing the same material.

Now if the Court will notice in this document, "Materiality of Depositions," the Government has listed under 25 topical headings the portions of the depositions that it did not withdraw and the reasons why it is retaining those portions or, in other words, indicating the materiality. Now the Court will note [Tr. 35] that under Items 1, 2 and 3 through 6 on page two, the reference is made to the place in the Defendants' Objections to Plaintiff's Evidence where objection is made to portions of the depositions, the name of the witness, and the portion of the deposition objected to. But on pages three through six of the document that Your Honor has in his hand there are no itemizations of the particular witnesses' testimony and of the reference pages; and that is merely because of time. On Friday we did complete that; in other words, pages three through six are now completed. They do have the specific reference to the specific deposition and the specific page numbers. The stencil was run on Friday and Mr. Smith received a carbon copy of that stencil this morning, so that meant there was only one copy for all eighteen defendants. I left instructions with my secretary today to run that stencil and mail that out today; so that when that is done, the defendants will have in their hands the same document that Your Honor has but with pages three through six completed as they were completed on pages one and two.

The Court: Now let me ask you a question right there. Do I understand that your deletions which you have just filed, with the paper which you propose to file early next

week listing the materiality of [Tr. 36] depositions, will those two papers have reference to all the deposition testimony you have designated?

Mr. Bernstein: Yes, sir. Those will have reference to all of the deposition testimony to which the defendants have made objections. I have not checked it to see whether there are any portions of the depositions the Government designated and the defendants did not object to. But with that, it would be all, yes, sir.

Now inviting the Court's attention to page two, one of the topical headings of materiality is, "To show that when a defendant increased its price to a specific customer it also took action designed to insure that a competitor would make the same increase." Now the parties stipulated that representatives of the companies exchanged this price information; the parties stipulated as to that. But the Government's contention is that it is very important and the only way the Government can prevail in this case is if it shows that this agreement to exchange the information which the Government contends exists was made for the purpose of reducing competition; and therefore you need the testimony of the witness, the company's representative, by deposition who, when he was explaining that he exchanged the information, he gave facts which will [Tr. 37] show that he also took action to make sure that a competitor would make the same increase.

The Government contends that without these detailed statements of the witnesses, the Court would not have the basis for appreciating or understanding the Government's legal arguments. Now the Government's position legally is this: that from the stipulations themselves the Court must find that the purpose of the exchange was to reduce competition because there could be no other conceivable explanation. For a competitor to give another competitor the price that he most recently quoted for a custom-made container, without which the competitor would not have that information, there could be no other purpose than to minimize the amount of the reduction the second competitor would quote or to permit him to quote the same price so that there would not be a competitive advantage.

Now this is pure legal argument; it's pure conception. And the Government contends that when the Court reads the evidence of these witnesses who stated what their pur-

pose was in giving this information, and reads their testimony concerning their relations with other competitors, that they had a general purpose to make their decisions so that each one's pricing conduct would be the same as the others, [Tr. 38] or to reduce the amount of competition that would otherwise develop; that the reading of this evidence will support the plaintiff's conceptual argument that this is the necessary consequence. The witnesses themselves testified to it and this confirms it, so that you don't have to rely on just argument, just logic. You have the economic data, you have the testimony of the witnesses, the factual stuff which will confirm that what you have arrived at logically is correct.

Recently there was a case before the Supreme Court, *United States v. White Motor Company*. The question at issue was whether, if a manufacturer requires a dealer to refrain from selling White Motor products in a territory other than a designated territory, that this was per se a violation of anti-trust laws; and the Supreme Court said: We are not ready to say that this is per se; we have to see the economic stuff, the method of doing business upon which they rely. And so they remanded the case to the court for this purpose. This case was ultimately settled because no evidence was introduced to show the purpose was a competitive purpose, and the case was disposed of.

The point is that here in this case the [Tr. 39] Court should not be obliged to decide this matter based on the bare factual conclusions and the stipulations, but to do it in conjunction with the testimony of the parties who participated; find out what they did, what their motives were, what their reasons were. And this is what the Government contemplated in talking about the stipulations from the beginning. It never contemplated that these stipulations would substitute for any evidence. It contemplated that it was to narrow the scope of the issues between the parties.

In the first set of proposed findings that the Government submitted to the defendants, it submitted a finding that the defendants agreed to furnish each other with price information. Now the purpose of submitting that to the defendants was to ascertain whether there was any real issue concerning it, because the plaintiff has designated portions of the depositions, portions—Item 18, these por-

tions of the depositions will be offered "To show that the defendants agreed to give the 'most recent price' when requested, in exchange for the opportunity of receiving it when they in turn would request it." And that was because numerous officials of the defendants had testified that the reason why they gave that competitor the most recent price was so that they in turn would be able to receive [Tr. 40] it when they wanted it; and the Government contends, therefore, that their testimony that they did it as a quid pro quo for receiving it and they did it over a long period of time, that this evidences a factual conclusion that there was an agreement to do it.

Now the defendants, by failing to agree to that stipulation, indicated to the plaintiff that this was the matter at issue and it had to be evidenced; and it's for that reason that certain portions of the depositions are not being evidenced, to show that there was that agreement.

Furthermore, the portion of the stipulation that Mr. Johnson read to the Court this afternoon concerning the contentions of the parties—and that's in the further stipulation with respect to certain proof on page three, Item (i):

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information nor to restrict competition."

And then it went on with other language. The Government respectfully submits that this indicates that the purpose of the stipulation was not, as the defendants would have you believe, to substitute for any evidence [Tr. 41] in the case or anything else, to substitute for the testimony of the depositions, but its purpose was to narrow the issues, to find out what the contentions of the parties were, and that's why that was put into the stipulation.

[Tr. 44] I think the real point of dispute between the defendants and the Government as to the estoppel on the part of the stipulations, whether or not the Government is estopped from using the stipulations, is that the defendants view the stipulations much upon submitting the case to the

Government on an agreed statement of facts; but that wasn't the intention of the parties here. The intention of the parties, if we will review the pre-trial conferences, at the first pre-trial conference the question of the defendants' discovery came up and the Government said rather than answer elaborate interrogatories, that both parties would hear the evidence of the officials of the defendants at the same time; the Government will then be in a position to submit its proposed findings and ascertain which of these are in dispute. Now that was the whole purpose of it. The defendants were given the opportunity to cross-examine on those depositions [Tr. 45] and they were not required to make their cross examination until ten days after the plaintiff had completed its examination in chief. The defendants chose not to cross-examine, chose not to get any evidence via the deposition route. Then when the plaintiff's proposed stipulations were submitted to the defendants, when the parties were here at a pretrial conference, in July I believe it was, the Government stated to the Court that certain facts had been stipulated and the quid pro quo for that stipulation was if the plaintiff would concede that its case in chief would consist only of the stipulations and the depositions and the documents, and nothing else. Then on one pre-trial conference it was reported to the Court that the stipulation had been agreed upon in substance but hadn't yet been executed because of the number of parties or certain other technical difficulties. And at that time I asked the Court to schedule a date for a time when the Government could come back in case the stipulation process broke down, so that we could consider another procedure; and the Government pointed out to the Court that it would have to consider calling live witnesses.

Now the Government precluded itself from calling live witnesses at this trial. The Government [Tr. 46] did not have to rely on the testimony of the defendants' officials in the depositions. It could have called those officials to testify in its case in chief, but it precluded itself from that because it relied on the fact that the stipulations provided the skeleton, the depositions, the testimony of the officials in the depositions provided the flesh and, therefore, there was no need to call these same officials as witnesses and take up the time of the Court to hear oral testimony.

Now if the Government is precluded from following that procedure, it will be prejudiced, because it has made clear to the Court and to the defendants time and time again that the real issue in this case is whether or not the purpose for the agreement to exchange the information was to reduce competition. If the Government had charged in its complaint that the parties had agreed to exchange price information, period, it would have no case; the complaint would be subject to dismissal. But the charge in the complaint is that they agreed to exchange price information for the purpose of reducing competition, and the Government always believed that it would be a meaningless gesture to offer stipulations of fact concerning purpose, which is intent, goes to the nub of the case, with any [Tr. 47] hopes that they would reach any stipulation of purpose; and so no stipulation was ever offered to the defendants on purpose. While it is true, and the Government reiterates today, that the defendants do get the substance of the plaintiff's case in those proposed findings of fact, they do not get any proposals concerning purpose. But the Government has made clear and it made clear in its memorandum before trial that the portions of the depositions that it did not cite with particularity were being offered to show the purpose.

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[Tr. 1]

January 11, 1967, 10:00 o'clock A.M.

The above-styled case came on for oral arguments before the Honorable Edwin M. Stanley, Presiding Judge, in the United States Courtroom, Federal Building, Greensboro, North Carolina, on the 11th day of January, 1967, commencing at 10:00 o'clock A.M.

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[Tr. 7] Mr. Bernstein: May it please the Court, the Government endorses the statement that the defendants made on page 119 of their brief that this case is really a simple one. There is no major factual dispute; there really is no [Tr. 8] major legal issue in dispute among the defendants and the plaintiff. And, therefore, the argument resolves itself into this simple proposition: The Government contends that the principles of the American Column and Lumber case and the principles of Maple Flooring and all of the legal principles should be applied to the case before the Court at this time. And the defendants say that the other principles in Maple Flooring should be applied to this case. And that is the entire dispute.

Now for that reason the Government is going to confine its argument to pointing out why what appears to be issues between the parties are not really issues or are of a minor nature and should be resolved in the plaintiff's favor. The plaintiff's argument can be summarized as follows: First, there was an understanding among all defendants that each would provide to the other upon request the most recent price which it had quoted or which it had charged to a specific customer as long as the recipient would reciprocally provide the same kind of information to the donor whenever it should be requested. That's the first point.

The second point is that because of the habitual practices and customs of the corrugated container industry and the circumstances under which the defendants in this case conducted their business, when each defendant [Tr. 9] disseminated this information to a competitor or a prospective competitor it was in fact informing that competitor what price it proposed to charge to a specific customer. That's the second point.

The third point is that this information was disseminated

and it was gathered so that a competitor or a prospective competitor could quote that specific customer the same price or, if in the exercise of a recipient's individual judgment the recipient thought it necessary or desirable to reduce the price quoted, the reduced price would be as little as possible or the reduction would be as little as possible. Now that's the third point.

So the Government contends that if the Court agrees with the Government's contention, and there was an agreement to give this information when it was requested in return for receiving it when it was requested, that agreement, if the Court finds that this information was tantamount to informing a competitor or a prospective competitor to what price he proposed to charge in the future to that customer and if the Court finds that the reason this information was disseminated and obtained was so, that a recipient could charge the same price or reduce the price as little as possible if he had to do it, that it is the Government's position that it is illegal per se, it is price-fixing under the Anti-Trust laws, it is an illegal per se violation of the [Tr. 10] Sherman Act for the defendants to agree to disseminate this kind of information to a competitor or a prospective competitor.

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[Tr. 525] *Mr. Bernstein.* The defendants misquote me when they say that it is my position that first you must infer an agreement to exchange information. I say that that is my solid position. There is no direct evidence; you must infer the agreement to exchange information, period.

But that's when I stop. I say that there is direct evidence that the purpose for that information was to charge the same price or to minimize the cut. That is direct evidence; you don't need any inference.

Now possibly I might have been the one that caused this misquotation, for this reason: At the opening, in the trial, I said that the Court could infer an agreement; it would be perfectly permissible for the Court to make that inference on the inference. But the Court doesn't have to do it in this case, because we have direct evidence of it. We have the testimony of the Government's adversaries, hostile witnesses, adverse witnesses, who say that their pur-

pose was to charge the same price or to minimize the cut; that's direct evidence.

Now therefore the Government says that it has established that there is an agreement to furnish information for the purpose and with the effect; because these witnesses also testified that that was the effect of it. The effect of it was to permit them to charge the same price. The effect of it was to permit a cut as little as possible. And [Tr. 326] therefore, if Your Honor recalls, in my initial closing argument, I said that if this had been set forth in a written contract, signed, sealed, and notarized, that "we agree to give information in exchange for reciprocally receiving it at a later time; on condition that you charge the same price or minimize the cut," that it would be a per se violation of the Anti-Trust law.

Now that's what makes the difference between this case and Maple Flooring and the Cement case.

[Tr. 330] The Court: But the defendants here, as I understand it, in their arguments said "Well, that's exactly what we are doing, because we made no—" that you have stipulated that—"we made no different use of information that they obtained from a competitor than we did from a customer." But the customer information sometimes will not be given, and on occasions it was unreliable; and that's the sole reason for the intercompany communication; and that was to verify the truth, if it was given; if not [Tr. 331] given, to do a legitimate thing; and that you agreed that they accomplished exactly the same thing.

This was to prohibit a purchasing agent from overstating his case, or to say "You've got to come lower if you want to get the order."

Mr. Bernstein: Well, that wasn't my intention, Your Honor, when the stipulation was entered into, that the only reason for exchange of information was to verify a price given by fraudulent or unscrupulous purchasing agents.

But it was in the testimony; the testimony in the case was, none of the witnesses—well, some of the witnesses say that, but most of the witnesses, when you read their testimony, say that "the reason we give the information is in order

to get it; and the reason we have to get it is because we want to know what price to charge them." And it's stipulated that they generally charged the same price that they received from their competitor. And others say that "If I want to cut it, if I decide to cut it, this will permit me to cut it as low as possible." Now that's the testimony.

In addition to that—in addition to that—they say that "We want to verify—we want to verify—the accuracy of the purchasing agents information." All right; now that's "in addition."

So when we are dealing in this case before [Tr. 332] Your Honor, we're dealing with those facts. We just can't say that the facts are limited to verifying information.

Now we have to reconcile Cement Manufacturers, Maple Flooring, American Column, and American Linseed, because I say none of them overrule any of the others. And so I would say that Cement Institute carves out an exception to American Column. And that is, where the overriding purpose—or where it can be demonstrated that the purpose is to prevent fraud, fraudulent use of a contract—And that's the only purpose that the Court found. If that's the purpose, then it is permitted.

But the Government submits that if the Court finds in this case—as it should from the direct evidence of the witnesses—that the purpose was to permit the quotation of the same price or to reduce the cut as minimal as possible, if the Court finds that that was the purpose, and if the Court finds that there was an agreement to exchange information, then we have an agreement to exchange information for the purpose and with the effect of stabilizing price information, which takes it out of the Cement Institute case and puts it right into the American Column case.

Now let me answer Your Honor's first question, which was: Did I stipulate myself out of court when I stipulated that they were free to exercise their own judgment as to what price to charge, and they generally did [Tr. 333] the same thing regardless of whether they got it from a customer or a supplier.

Now with respect to that, Your Honor, the defendants make much of the point that the cases hold—the cases we all rely on—that as long as you don't interfere with the freedom to prescribe his price—but there is another side to that coin. Judge Walsh made the point for the Govern-

ment. He said that even though he has a customer, he considers him an adversary. And you have another element to the competition here, because not only do you have competition among suppliers for the customer's business, you also have competition between a single supplier and a single purchasing agent for that particular business. Those two are traders; those two are bargainers.

And so we have another case. Now this case is different from Maple Flooring; it's different from Cement Institute; it's different from American Column, although the principles of American Column apply to it considerably; and the principles of all the cases apply to it. But the difference is that none of the Supreme Court cases have addressed themselves to the proposition of what do you do when there is competition between a buyer and a seller for a custom-made product. In all of those cases, you didn't have a custom-made product; you have things that have price lists that are widely disseminated and so on. In our [Tr. 334] particular case, we have the unusual situation that a single buyer is competing against a single seller.

Now obviously, if groups of buyers combined in concerted action against a single seller or single group of sellers, you have a boycott; you can also have a price fix if they arrange that "we won't buy except at this price." And by the same token, when groups of sellers combine so that this buyer is not permitted free trading or bargaining with a single seller, then it becomes illegal and a concerted action.

So I have not stipulated myself out of court, because the Government substitutes for the commitment that all of the defendants' counsel have insisted that the Court must find, they must find that they are committed to charge the same price or committed to cut just a little bit before they can find an illegal agreement; and they say there is no expressed commitment and no agreement can be inferred. And the Government contends that it substitutes for commitment the self-interest of the supplier in combining co-operatively to their mutual advantage to see that each one in turn when he is dealing with a specific customer is able to get the highest price from that specific customer. And that constitutes the commitment and the agreement in this case.

Now the agreement in this case—I must repeat; I

[Tr. 335] reiterate over and over again; and I don't back away from it—the agreement in this case is to exchange information for the purpose of permitting a recipient to charge the same price and reduce the cut as little as possible. That's the agreement.

I circumlocuted the word "agreement" with the word "understanding," because I didn't want the Court to get the impression that I was arguing that there was a price-fixing agreement in the conventional sense of the word. "We agree that tomorrow we will charge this much," and so on. I wanted the Court to get the impression that I was talking about the concerted action of giving this information for the purpose and with the effect; that concerted action was what I was talking about; I was talking about a gentleman's agreement, an understanding. The word "agreement" generally connotes—and Mr. Milman took great pains to discuss contract; and he says there's no difference between "contract" and "agreement." Well, sure, there's no real difference. But we want to use words that articulate and express our own concepts and express with precision what we mean.

Now generally speaking, when we talk of a contract, we're talking about a legal document, a legal lawful document that one may go into court and enforce. If I sign a contract with a gambler that I will participate in a bookmaking activity, we don't generally call that a contract, [Tr. 336] because normally people don't do that—in their right minds, anyway. We call that concerted action; we call that an understanding; we call that a gentleman's agreement. And that's what we are referring to here in this case.

And so when the plaintiff stipulated that they were free to exercise their own judgment, why then that was they were free to determine on this particular occasion what they were going to do, were they going to charge a higher price and reject the business, the same price and get a part of it; or do something else with it, or cut it just as little as possible to get the business. Now that's the distinction that I make for the Cement Institute.

The Court: Well, tell me about this: The Defendants' Request, which you agreed to, Finding Number 40—

Mr. Bernstein: Which Finding, sir?

The Court: 40. "There is no evidence—" and I assume that when you say "no evidence," you mean circumstantial,

direct, or otherwise—"that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information or the fact that price information had been or was being communicated or the frequency of such communication or the requesting or failing to request this information or the method of communicating or the action to be taken or not to be taken with respect to such information."

[Tr. 337] That there was "no evidence"; and I am particularly interested that there was no evidence in this record that there was ever any communication between one employee and another—and all of these defendants, they are all corporations; they only act through their employees—with respect to the action to be taken or not to be taken with respect to such exchange of information.

Mr. Bernstein: That's just with respect to the exchange of information.

The Court: That is all that is complained about here, that they are doing, this exchange of information.

Mr. Bernstein: That's right.

The Court: Now what concerns me more specifically there, you say that you infer—well, you do not say that you infer; you say you find from specific evidence—direct evidence—that there was an agreement—

Mr. Bernstein: No. No, I say—

The Court: An understanding.

Mr. Bernstein: No. I say that there was direct evidence that the purpose of the receipt and giving was to quote the same price or less. I say that you infer the agreement to give the information.

The Court: That's right.

Mr. Bernstein: And therefore, having found first—having found that there was the agreement by inference—and [Tr. 338] then direct evidence that that was the purpose, then the Court can properly find by the preponderance of the evidence that there was an agreement to provide the information for the purpose and with the effect.

Now the Government has stipulated here that there is no evidence—that means testimony, documents, or anything else—of the action to be taken; and this is the Finding proposed by the defendants—

The Court: Well, you agreed to it.

Mr. Bernstein: Yes; yes, certainly. Just as I said yester-

day, Your Honor, I would say that there is no evidence in this case that the defendants monopolized; there is no evidence in this case that they have done anything else. Because the plaintiff hasn't charged—hasn't made the claim that there were conversations as to how this information was to be given or how the information was to be received. The Government doesn't claim that it has evidence—

The Court: I know. But you see, I am interested "There is no evidence as to the action to be taken or not to be taken with respect to the exchange of this information." If I read that correctly, you say you have stipulated—

Mr. Bernstein: Oh, no, Your Honor. Let's get that straight. This is not the stipulation; this is a Proposed Finding. When I read that Proposed Finding, I read it to mean that there is no evidence in this case, there is [Tr. 339] no testimony, there are no documents, as to what they were going to do with this information or were not going to do with this information. I did not intend to mean that there was no direct evidence as to what the purpose of an individual giving information or receiving information was.

The Court: Well, when I say "stipulation," I mean it was an Agreed Finding, which has the effect—

Mr. Bernstein: Well, if that is the case, then I've got to withdraw my agreement to that Finding, if that's the way it's to be interpreted.

The Court: I don't know how it's to be interpreted; I am asking you what sort of interpretation do you put on it. Because, unfortunately, I'm going to have to try to interpret it somehow along with all the balance; and I just happened to read that a few minutes ago and wondered what it meant.

Mr. Bernstein: Well, that's what it meant to me when I agreed to it, Your Honor. If Your Honor recalls, the Government took the position that most of the Findings proposed by the defendants, except those where they are counterparts of what are proposed by the plaintiff, the plaintiff contends should not be found by the Court.

On the other hand, the plaintiff wanted to be in a position to simplify the Court's task to say, "We don't quarrel with the accuracy of this." And the Government does [Tr. 340] not quarrel with the accuracy of Finding 40, if Finding 40 means that there are no witnesses' testimony,

there are no documents in this case which concerns conversations or communications among employees of the defendants concerning for what reason they were going to give information and for what reason it was to be received.

The Court: Well, I had noticed in another place, you said, "no direct evidence," and in another place, "there is no expressed agreement." They wanted you to agree to a finding that at no time was there any agreement or understanding; and you inserted the word "expressed".

Mr. Bernstein: Which one, Your Honor?

The Court: I am looking at 44. That before you would agree to that, you wanted them to insert the word "expressed" and strike out "understanding".

Mr. Bernstein: That's right.

The Court: I saw that. There is another place where you said there is "no direct evidence nor expressed agreement," and over here you say, "there is no evidence"; and you took it you meant there was no evidence, circumstantial or otherwise.

Mr. Bernstein: Oh, I'm sorry. I didn't intend that; I didn't intend that.

[Tr. 348] That is not the Government's position. The Government's position is that there was concerted action to provide this information upon request for the purpose of stabilizing the price or minimizing the cut to any customer for which it was asked, although—although—each Defendant did not ask for it with respect to every customer. There were some occasions when it didn't ask for the information.

So it is the Government's position that no one—no one—can evidence which customers there was a restriction for. And if the Government brought in a parade of ten thousand customers, the only thing that they could testify to, the most that they could testify to, would be that, [Tr. 349] "It was very strange to me that I asked for quotations on a custom-made product and I got the same price from several different competitors. That's strange to me."

But we have stipulated that. We have stipulated that when they got the information, when they had reliable

information as to what price was most recently charged, they charged the same price; and so there is no need to bring those witnesses in to say that. The witnesses would not be able to testify as to the conversation, the telephone conversation, between plant managers; they wouldn't know anything about that. So how could we evidence which customers were restricted?

The Government's position is that this agreement was pervasive. It concerned all of the customers, although there were times when it wasn't used for all of the customers.

Now then, the question becomes, well, how often was it used. But Mr. Johnson said frequency is not in issue here, and it isn't. Because the frequency doesn't really tell us anything. The important thing is, and you cannot help but get this impression reading the testimony, while that may have been done irregularly, at irregular times, it was done regularly. It was done throughout; it was not unusual. It was no uncommon; it was done whenever it was needed. Now when was it needed? It was needed [Tr. 350] (a) when they didn't have the information in their own records, (b) when they chose not to believe the customer, or when they chose to verify it. And by saying they chose to verify it, there's no substitute for fraudulent contract as in the Cement Institute case. Because they may choose not to believe them at a time when he is telling the truth and no fraud is being perpetrated.

Now the other time that they chose not to use it is, as some of the witnesses testified, "If I determined that I was going to cut a price, I would not call my competitor. I would use my own judgment and quote the price, because I would think it was unfair." And it is for that reason that the Plaintiff stipulated that if the officials of the Defendants were called to testify—and that's all we stipulated; we didn't say that that really is the fact—if they were called to testify, they would say that they believed they were free to furnish or not furnish or free to request or not to request. I think it's "free to furnish or not furnish." And that is because they recognize there are certain situations where they may want to cut a price and they may not want to ask a competitor for that information; and by the same token; there may be some situations when one of their competitors might be off the air for a

period of time, as it was in this case, when they would not wish to furnish the information to him. [Tr. 351] Then when he goes back on the air, then they would furnish the information.

Now I am sure—I almost hesitate to mention this, but I think it should be made clear for the purposes of the record because the record reads a little differently when you read it several months later or a year later and so on. I am positive that the Court is not going to prejudice the Plaintiff or prejudice any Defendant because they saved six months or more trial by making stipulations rather than bringing witnesses into the Court. And so it's a little unfair to say because the Plaintiff conducted this intensive grand jury investigation and they didn't bring any witnesses in here who would testify to any of those things. The Plaintiff used its best efforts to narrow this question down to the legal question that it stated in its opening argument, which case should be applied, which principle of which case should be applied to this situation. The Government contends that it's the principle in American Column that should be applied to this case, that competitors, rivals, do not act to their disadvantage in giving this information.

Therefore, it is for that reason that the Plaintiff stipulated these many things, because it believed that that would be irrelevant. That isn't the point. That doesn't answer the question. The sole, single, simple [Tr. 352] question is: Was there an agreement to give the information? If the Court finds that, and that has to be done by inference, then the Court can find from direct evidence or by inference, whichever it chooses, or both, but certainly by direct evidence, that it was with the purpose and effect to stabilize the prices. And once the Court makes those findings, then it is illegal per se. American Column holds it. Maple Flooring holds it. Cement Institute holds it. Sugar Institute holds it. It's illegal per se. Socony Vacuum holds it. It becomes a tampering with the price structure.

**DEFENDANTS' PROPOSED FINDINGS OF FACT AND
RESTATEMENT OF CERTAIN FINDINGS OF FACT
PROPOSED BY THE PLAINTIFF**

Dated: May 2, 1966



EXPLANATORY NOTE

The materials contained herein are filed by the defendants pursuant to the Order of the Court dated January 31, 1966.

PART I contains the Findings of Fact proposed by the defendants. The findings contained in Sections I through VIII and X are proposed by all of the defendants and those contained in Section IX are proposed individually by the particular defendant to which the findings relate.

PART II contains a restatement of certain findings proposed by the plaintiff, which the defendants contend are wholly irrelevant to the issues in this case and to which the defendants have objected. Additionally, these findings are contended by the defendants to be inaccurate or incomplete in material respects in the form and language submitted to the defendants by the plaintiff. Each restatement is submitted in order to inform the Court as to accurate and complete statements of the facts relating to the subject matters of such findings, in keeping with what the defendants understand to be the desire of the Court, without regard to the pendency of such objections. In so doing defendants do not waive any such objections.

Defendants have advised the plaintiff that other findings proposed by the plaintiff are objected to on various grounds, and it is expected that these objections will be noted by the plaintiff in its submission of its proposed findings.

PART III contains certain additional findings proposed by the defendants named therein, only in the event that the Court determines that findings are to be made relating to the subject matters covered in the restatements set forth in Part II.

The foregoing were submitted to the plaintiff and the extent of plaintiff's agreement with the form and language of the findings proposed in Part I, the restatements made in Part II and with the findings conditionally proposed in Part III are indicated for each as follows:

1. Where the plaintiff has advised the defendants that the form and language of the finding in its entirety as stated by the defendants are acceptable to the plaintiff, the word "**Agreed**" is set forth next to the finding.

2. Where the plaintiff has advised the defendants that the form and language of the finding as stated by the defendants are not fully acceptable to the plaintiff, but would be acceptable with certain deletions or additions, which deletions or additions are not agreed to by the defendants, the words "**Agreed in Part**" are set forth next to the finding. Such deletions or additions are indicated as follows:

(a) By bracketing to show the additional language requested by the plaintiff which is not agreed to by the defendants; and

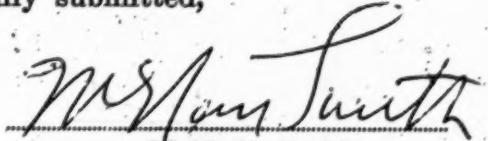
(b) By underscoring to show language which the plaintiff requested be deleted, when such deletion is not agreed to by the defendants.

3. Where the plaintiff has advised the defendants that the finding in its entirety or in its basic substance is not acceptable to the plaintiff, the words "**Not Agreed**" are set forth next to the finding.

The citations contained herein were given to the plaintiff to assist him and were not intended to be exhaustive.

It was agreed by all defendants that these proposed findings and restatements be signed for them by the undersigned in order to avoid the mechanical problems of circulating the document for signatures.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "McNeill Smith", written over a horizontal line.

McNeill Smith

For all Defendants

Dated: May 2, 1966

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Part I

Defendants' Proposed Findings of Fact

I. Introductory Material

1. This is a civil action upon complaint of the United States of America (plaintiff) filed on October 14, 1963, under 15 U.S.C. § 4 to prevent and restrain an alleged violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. [Complaint ¶ 1] **Agreed**

2. Jurisdiction of the subject matter duly appears and proper venue of the defendants hereto is not contested. [Complaint ¶ 1; Transcript of Initial Pre-Trial Conference of February 25, 1964, p. 10.] **Agreed**

3. The complaint charges that "the defendants have engaged in a combination and conspiracy in unreasonable restraint of * * * interstate trade and commerce in corrugated containers, in the Southeastern United States; in violation of Section 1 of the Sherman Act"; that the "afore-said combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers"; that for "the purpose of effectuating the aforesaid combination and conspiracy the defendants have done those things which as hereinbefore charged they combined and conspired to do"; and that the "combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated" **Agreed**

containers to purchasers located in the Southeastern United States."* [Complaint ¶¶ 10-13].

Agreed

4. Defendants' answers deny in all material respects the aforesaid allegations of the complaint.

Not

Agreed

5. Defenses are raised by the answers based on the provisions contained in a consent decree approved and entered on April 23, 1940, by the United States District Court for the Southern District of New York in the action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" (Civil Action No. 8-318). See Findings 45 through 50, *infra*.

Agreed

6. Attorneys for the plaintiff and for all of the defendants, acting in conjunction with this Court, streamlined both discovery procedures and the presentation of evidence at the trial of this case, without restricting either party from obtaining or presenting any evidence believed to be necessary. In the final stipulation controlling the trial of the case, plaintiff and the defendants stipulated as follows:

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information or to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer an agreement to exchange information as to the most recent quoted price for corrugated containers and that from such agreement, together with such facts,

Not

Agreed

* There is no allegation or charge that the defendants, or any of them, have engaged in any combination, conspiracy, or concert of action or have entered into or at any time been a party to any agreement or understanding with respect to prices generally, or with respect to the prices any one or more of them charged, contracted to charge, or quoted specific customers for corrugated containers, or with respect to any increase, decrease or other change by any one or more of them in prices for corrugated containers, or with respect to any element of such prices.

the Court may infer an agreement to restrict competition. The defendants deny that there was any agreement to exchange price information or to restrict competition and contend that no such agreement or agreements can be inferred." [¶ (i) DX-1]

7. For purposes of brevity, the defendants are referred to herein by the following abbreviated names: Agreed

Container Corporation of

America Container Corporation

Albemarle Paper Manufacturing

Company Albemarle

Carolina Container Company Carolina

Continental Can Company, Inc. ... Continental

Crown Zellerbach Corporation Crown Zellerbach

Dixie Container Corporation Dixie

Dixie Container Corporation

of North Carolina Dixie of North Carolina

Inland Container Corporation ;... Inland

International Paper Company International

The Mead Corporation Mead

Miller Container Corporation Miller

Owens-Illinois Glass Company Owens-Illinois

St. Joe Paper Company St. Joe

St. Regis Paper Company St. Regis

Tri-State Container Corporation .. Tri-State

Union Bag-Camp Paper

Corporation Union-Camp

West Virginia Pulp and

Paper Company West Virginia

Weyerhaeuser Company Weyerhaeuser

Agreed

8. Except as otherwise stated or required by context, the facts set forth in each of the following Findings occurred or existed within the period from January 1, 1955 to October 14, 1963 (hereinafter referred to as the "period covered by the complaint") and within and are limited to the South-eastern United States (herein defined as the states of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky).

Agreed

9. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular course of its business except that the following defendants were not engaged in the corrugated container business in the South-eastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959
Continental	October 26, 1956
Crown Zellerbach	November 30, 1955
Dixie of North Carolina	March 1, 1959
Mead	December 27, 1956
Owens-Illinois	October 4, 1956
St. Regis	October 2, 1958
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch)
Weyerhaeuser	May 1, 1957

[¶¶ 3, 4 Ex. I PX-1]

Agreed

10. Most of the corrugated containers sold by each of the defendants in the regular course of its business were

manufactured by it upon customer order and in accordance with the specifications prepared by or for the particular customer so ordering as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this Finding. [¶ 8 Ex. I PX-1]

11. The basic material used in the manufacture of corrugated containers is corrugated containerboard consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard. [¶ 38 Ex. I PX-1] **Agreed**

12. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured. [¶ 5 Ex. I PX-1] **Agreed**

II. The Industry

A. Size and Growth

Agreed 13. Aggregate dollar sales of corrugated containers for all defendants for each year since and including 1961 were in excess of \$100 million per year. At the time of the filing of the complaint herein, the aggregate shipments of corrugated containers of all defendants from plants in the Southeastern United States represented approximately ninety per cent (90%) of total shipments of corrugated containers from all plants in the Southeastern United States. [¶¶ 6-7 Ex. I PX-1; ¶ 1 PX-2]

Agreed 14. During the period covered by the complaint there has been growth and expansion of the corrugated container industry in the Southeastern United States. From an industry comprised in 1955 of 30 manufacturers having a total of 49 corrugated container manufacturing plants it has grown to an industry comprised in 1963 of 51 manufacturers having a total of 98 such plants. In January 1955, the beginning of the period covered by the complaint, 9 of the 18 defendants and 21 non-defendants were engaged in the corrugated container business in the Southeastern United States. In 1963, the end of the period covered by the complaint, there were a total of 18 defendant and 33 non-defendant corrugated container manufacturers in the Southeastern United States. During the same period shipments of corrugated containers from plants located in the Southeastern United States increased from slightly over 9 billion square feet in 1955 to almost 16 billion square feet in 1963. This growth and expansion is illustrated by the following statistics showing the number of such plants in the South-

eastern United States and the volume of shipments therefrom:

<u>Year</u>	<u>Number of Plants</u>			<u>Shipments of Corrugated Containers (Millions of Sq. Ft.)</u>
	<u>Total</u>	<u>Defendants</u>	<u>Others</u>	
1955	49	18	31	9,077
1956	56	21	35	9,659
1957	59	30	29	10,026
1958	67	36	31	10,400
1959	71	43	28	12,828
1960	76	46	30	12,266
1961	81	53	28	13,481
1962	85	55	30	14,831
1963	98	58	40	15,846

[¶ 1 Ex. I DX-1]

15. In 1963 there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who in the course of their sales activity in behalf of their respective companies each business day made on the average 4 or 5 calls each on purchasers or potential purchasers. In October 1963 the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States: Agreed

<u>Company</u>	<u>Number</u>	<u>Company</u>	<u>Number</u>
Container Corporation	57	Mead	26
Albemarle	9	Miller	7
Carolina	15	Owens-Illinois	59
Continental	20	St. Joe	12
Crown Zellerbach	27	St. Regis	23
Dixie	12	Tri-State	5
Dixie of North Carolina	3	Union-Camp	36
Inland	24	West Virginia	17
International	23	Weyerhaeuser	36

[¶ 15 Ex. I DX-1]

B. Factors of Supply and Demand

Agreed 16. Throughout the period covered by the complaint there has been an ample supply of raw materials available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment has been available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise. [¶ 2 Ex. I DX-1]

Agreed 17. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of such purchasers for such containers. [¶ 3 Ex. I DX-1]

Agreed 18. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its

capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible. [¶ 6 Ex. I DX-1]

19. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements. [¶ 4 Ex. I DX-1] Agreed

20. During the period covered by the complaint the trend of corrugated container prices was downward and while containerboard prices fluctuated during the period, they were substantially the same at the end of said period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally and for all other commodities excluding farm and food. During the same period labor rates, machinery and equipment costs, and other production costs for both corrugated containers and containerboard increased. [¶ 7 Ex. I DX-1] Agreed

21. Throughout the period covered by the complaint, prices for corrugated containers have been responsive to the forces of supply and demand. [¶¶ 3, 7 Ex. I DX-1; CX-6, pp. 604-605; DX-32, 131, 133, 135, 136, 137, 138, 139, 142, 143, 144, 148, 149, 152, 153, 155, 183, 205, 206, 208, 279, 309, 318, 322, 336, 387, 418, 464, 467, 504, 507, 528] Not
Agreed

III. Nature and Extent of Competition and Effect of Price Communication

Agreed
in Part*

22. Throughout the period covered by the complaint, the corrugated container industry was and is highly competitive and each defendant engaged in and was faced with price competition in the sale of corrugated containers, and the parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would so testify. [¶ 17 Ex. I DX-1; DX-7 through 1042]

Agreed

23. Throughout the period covered by the complaint every purchaser of corrugated containers has had numerous alternate sources of supply, both actual and potential. Such purchasers are free to shift all or a part of their business from one supplier to another, and they frequently do so. Although such purchasers generally do not make such shifts unless offered a lower price by another supplier, each defendant repeatedly loses customers and obtains new ones and continuously has substantial losses and gains in its sales to particular customers. Tables 1 and 2 annexed to DX-1 and the Charts on pages 21 through 24 of DX-6 reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in said Tables and Charts are representative for each defendant of the entire period covered by the complaint. [¶ 5 Ex. I DX-1]

Agreed

24. The following examples from Tables and Charts referred to in Finding 23 are typical of the extent of gains

* As stated in the Explanatory Note above, the material underscored in this and other Findings shows language which the plaintiff requested be deleted, when such deletion is not agreed to by the defendants.

and losses in customers and in sales to particular customers experienced by each of the defendants throughout the period covered by the complaint.

A. In 1960 Container Corporation's plants in the Southeastern United States made sales of corrugated containers to a total of 3,132 accounts. Of these 1,209 accounts, representing over 38% of all of the accounts sold by Container Corporation during that year, were new accounts; i.e., accounts which had bought nothing from any of Container Corporation's plants in the Southeastern United States during the preceding year. In addition, Container Corporation's sales during that year to another 488 of those accounts, representing over 15% of the total, amounted to more than 150% of its preceding year's sales to each of such accounts. Moreover, of the 3,132 accounts sold in 1960 a total of 1,210 (over 38%) were totally lost by Container Corporation in 1961, and its sales in 1961 to another 343 of these accounts (over 19% thereof) were less than 50% of its preceding year's sales to each of such accounts. Not only was a large percentage of Container Corporation's total Southeastern United States accounts involved in such gains and losses but the dollar volume of its sales to such accounts was also very substantial, accounting for over \$14,300,000 out of total sales of about \$29,400,000, or more than 48% of Container Corporation's total corrugated container sales from plants in the Southeastern United States.

Agreed

B. In 1960 Albemarle's plant at Richmond, Virginia, sold a total of 291 accounts. Of these, 92 (over 31%) were new accounts. Albemarle's sales in 1960 to another 49 accounts (over 16% of Albemarle's total accounts) amounted to over 150% of its preceding year's sales to each of such accounts. Of the 291 accounts sold by Albemarle in 1960, 96 (approximately 33%) were totally lost by it in 1961, and its

Agreed

1961 sales to another 50 of these accounts (over 17%) were less than 50% of its preceding year's sales to each of such accounts. The dollar volume of Albemarle's 1960 sales to the accounts involved in such gains and losses amounted to almost \$1,200,000, or more than 67% of its total 1960 corrugated container sales of less than \$1,800,000.

Agreed

C. In 1960 Owens-Illinois' plants at Atlanta, Georgia, Jacksonville, Florida, Miami, Florida, and Salisbury, North Carolina, sold a total of 2,527 accounts. Of these, 908 (over 35%) were new accounts. Owens-Illinois' 1960 sales to another 381 accounts (over 15% of total 1960 accounts) exceeded 150% of its preceding year's sales to each of such accounts. Of the 2,527 accounts sold in 1960, 941 (over 37%) were lost by Owens-Illinois in 1961; and its 1961 sales to another 268 of these accounts (over 10%) decreased to less than 50% of its 1960 sales to each of such accounts. The dollar volume of Owens-Illinois' 1960 sales to the accounts involved in such gains and losses amounted to almost \$8,900,000, or more than 62% of its total 1960 corrugated sales from the above plants of less than \$14,300,000.

Agreed
in Part

25. The record includes over 1,000 documents from the defendants' files. These documents are contemporaneous business records most of which relate to specific purchasers prepared by employees directly engaged in the sale of corrugated containers. They provide a detailed portrayal of independent and unrestricted price competition by each of the defendants. These documents constitute a sampling from the defendants' files. This sampling relates to hundreds of purchasers of corrugated containers and to thousands of transactions with such purchasers. [DX-7 through 1042] Among other things, these documents establish that during the period covered by the complaint:

(a) In order for a supplier or prospective supplier to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser. **Agreed**

(b) Purchasers [have] usually and voluntarily informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices. **Agreed in Part***

(c) Purchasers [have] frequently informed suppliers and prospective suppliers as to the particular prices which must be met or beat in order to obtain or retain business. **Agreed in Part**

(d) Upon obtaining such price information, suppliers and prospective suppliers [have] frequently reduced their prices. **Agreed in Part**

(e) Absent such price information, a supplier or prospective supplier [has] frequently quoted prices higher than those most recently charged or quoted by other suppliers. **Agreed in Part**

(f) Each defendant frequently encountered situations in which the prices most recently charged or quoted by it were cut by other defendants and responded to such price cutting by meeting or beating the prices quoted by such other defendants. **Agreed in Part**

(g) Each of the defendants endeavored to obtain additional sales by cutting the prices which other defendants had most recently charged or quoted to their customers or prospective customers. **Agreed**

* As stated in the Explanatory Note above, the material in brackets in this and other Findings show additional language requested by the plaintiff which is not agreed to by the defendants.

Agreed
in Part

26. Plaintiff was furnished listings showing the name and address of every corrugated container customer in the Southeastern United States of each of the defendants, aggregating more than 10,000 such customers. No evidence was adduced by plaintiff from any of such customers showing or in any way indicating that the prices charged by any one or more of the defendants were stabilized or harmonized by the requesting or furnishing of price information by or between any of the defendants, or showing or in any way indicating that the prices charged or quoted such customers were any higher than they would have been had there not been any such requesting or furnishing of price information, or showing or in any way indicating any uniformity or parallelism of prices between or among any two or more of the defendants.

Agreed
in Part

27. The record contains statistics, together with graphical presentations prepared therefrom, showing for the entire period covered by the complaint the four-week price trend of each plant of each defendant except Albemarle, Miller and St. Joe, as well as the average monthly prices of St. Joe. These statistics demonstrate the absence of any uniformity, harmony, stability, or parallelism in prices either as among the several defendants or among the plants of individual defendants. The price trends varied widely among the plants of the several defendants both as to direction and as to degree. At the same time as the price trends of some plants moved upward, those of other plants moved downward, and when two or more moved in the same direction, the amount of movement differed substantially.
[DX-5; DX-6, pp. 2-20, 25-46]

IV. How Prices Are Determined

28. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following:

Agreed

- (i) estimates prepared from its internal manual;
- (ii) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season, and with the rise and fall of business activity of its customers;
- (iii) suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary;
- (iv) availability of any special materials needed to produce the order;
- (v) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of the plant;
- (vi) convenience of customer's plant location for servicing and cost of delivery;
- (vii) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule;
- (viii) customer's credit rating;
- (ix) growth prospects of the account and the possibility of substantial future orders;

* See Findings 51, 57, 63, and 64.

(x) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it;

(xi) amount of customer's business represented by the order;

(xii) general market conditions in the Southeastern United States and in the corrugated container industry particularly;

(xiii) prices of its recent sales of the same or other corrugated containers to that customer;

(xiv) customer loyalty;

(xv) effect of the order on its costs and profits; and

(xvi) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief.

[¶ 14 Ex. I DX-1]

Agreed

29. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially the same; or (3) there had been a change in raw material costs or other significant costs. [¶ 54 Ex. I PX-1]

Agreed

30. Most purchasers of corrugated containers generally purchase their containers from two or more of the defendants concurrently. [¶ 10 Ex. I PX-1]

31. Prices which purchasers of corrugated containers will pay are determined on the basis of price alternatives available to them from existing and prospective suppliers. It is necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers. [¶ 12 Ex. I DX-1]

Agreed

32. The defendants, in selling corrugated containers, deal with buyers who have knowledge of prices which have been and are being offered by competing suppliers of corrugated containers. [¶ 11 Ex. I DX-1]

Agreed

33. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information. [¶ 11 Ex. I PX-1]

Agreed

34. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions, therefore, no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like containers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some

Agreed

purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low-quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision. [¶ 70 Ex. I'PX-1]

V. Obtaining Price Information

35. Possible sources for obtaining the most recent price* to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales or from the particular purchaser involved. [¶ 13 Ex. I PX-1] Agreed

36. On occasions buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers. [¶ 11 Ex. I DX-1] Agreed

37. No defendant furnished any competitor most recent price information except in response to a specific request therefor. [CX-4, p. 159; CX-5, pp. 277, 315, 343; CX-6, pp. 451, 535-536, 566, 587; CX-7, p. 633] Agreed

38. The extent and frequency with which most recent price information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants. [¶ 31 Ex. I PX-1] Agreed

39. There was no evidence of express assurance that any defendant who furnished such price information upon re- Agreed

* As used herein the words "most recent price" mean either the most recent price charged a specific customer in an actual sale or the price most recently quoted. In most instances when a defendant requested or furnished another defendant information as to its price to a specific customer, such information related to a price charged the customer in an actual sale, but on occasion some of the defendants requested and/or furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. [¶¶ 12 and 34 Ex. I PX-1] Agreed

quest of another defendant would be able to obtain price information from such other defendant. [¶ 19 Ex. I PX-1; CX-5, p. 224; CX-7, pp. 651, 721, 727]

Agreed

40. There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

Agreed

41. The parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that he considered that he could (with the exceptions noted in Findings A-5, H-14, L-5, and O-2) request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Not
Agreed

42. When price information was requested of a defendant by a competitor, such defendant's decision whether or not to furnish such information was not affected by any price or price level which such competitor had previously charged or quoted or which such competitor might thereafter charge or quote. [¶¶ 19-23, 70 Ex. I PX-1; ¶ 17 Ex. I DX-1; CX-4, p. 122; CX-5, pp. 282-287; CX-6, pp. 604-608]

Agreed
in Part

43. Throughout the period covered by the complaint, each defendant [at some time] felt free to cut a most recent price received from a competitor, and after receiving a most

recent price from another defendant frequently charged or quoted prices lower than those received. [¶70 Ex. I PX-1; CX-4; pp. 123-124, 147-148; CX-5, pp. 282-288, 298-300, 311-312, 343-344; CX-6, pp. 593-594, 596-597, 604-608; CX-7, pp. 689, 693, 713-714]

44. No defendant at any time had any [express] agreement or understanding with or was under any obligation to any other defendant with respect to any price or prices to be charged or quoted for corrugated containers, irrespective of whether or not such defendant had requested from or furnished to the other any price information. [¶70 Ex. I PX-1; ¶¶ 14, 17 Ex. I DX-1; DX-7 through 1042; CX-4, pp. 123-124, 147-148; CX-5, pp. 282-288, 298-300, 311-312, 343-344; CX-6, pp. 593-594, 596-597, 604-608; CX-7, pp. 689, 693, 713-714]

Agreed
in Part

VI. The 1940 Consent Decree

Agreed 45. On April 23, 1940, a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318). [¶ 18 Ex. I DX-1]

Agreed 46. Container Corporation and Inland were among the defendants in the aforementioned action. In addition, the following corporations were among the defendants in such action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

[¶ 20 Ex. I DX-1]

47. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court: Agreed

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

[¶ 21 Ex. I DX-1]

48. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated: Agreed

"1. That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be nolle prossed in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and in promoting free competition in an orderly market;

. . .

"3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

"4. That such consent decree has been tendered by defendants voluntarily and in good faith;

"5. That in the opinion of the Department of Justice; the nolle prossing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; * * *

[¶ 22 Ex. I DX-1]

Agreed

49. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto, in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.
[¶ 23 Ex. I DX-1]

Agreed

50. The consent decree provides in part as follows:

"3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing; any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

"(a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers;
* * *

"4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors."

VII. Manuals and Internal Manuals

51. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. Such manuals also contained various costs and/or charges relating to the actual manufacture of corrugated containers. Such manuals also contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals," "pricing manuals," "pricing procedures" or "estimating manuals." Whenever these manuals are hereinafter referred to, they are specifically described as "internal manuals." [¶ 35 Ex. I PX-1] Agreed

52. At various times, manuals containing formulae and schedules of charges from the application of which a price estimate could be computed for most containers manufactured by them were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Divi- Agreed

sion) and Inland. Each of said manuals was made available to other manufacturers of and customers for corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Finding. [¶ 36 Ex. I PX-1]

Agreed 53. The manuals were variously referred to in the trade, among other things, as "price lists," "estimating and pricing manuals" or "estimating manuals." [¶ 37 Ex. I PX-1]

Agreed 54. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. In the trade these charges were variously called, among other things, an "area charge," "base," "base price," "board base price," "board factor," "multiplier," "level" and "board level." [¶¶ 39-40 Ex. I PX-1]

Agreed 55. The manuals also contained various charges relating to the actual manufacture of corrugated containers. Before the actual manufacturing process can begin, it is necessary to set up the production machinery to accommodate the particular specification, such as style, dimensions; printing, kind of joint, etc., for each individual order and type of corrugated container. The manuals also contained a schedule of charges commonly called "set-up charges" to cover the cost of the setting up of the necessary machinery for the production of corrugated containers of various specifications. [¶¶ 42-44 Ex. I PX-1]

56. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs and profitability and desirability of such business. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(1) By application of the formulae and schedules of charges set forth therein;

(2) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein;

(3) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(4) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(5) By any combination of the applications referred to in subparagraphs (2), (3) and (4) hereof;
or

(6) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several defendants, and among the plants and customers of individual defendants. [¶ 47 Ex. I PX-1]

57. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, Agreed

each defendant having an internal manual or internal manuals has used such internal manuals in approximately the same ways and under the circumstances described in Finding 56, and often along with one or more of the manuals referred to in Finding 56. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants. [¶ 48 Ex. I PX-1]

Agreed 58. If the same board level and set-up charge were used in computing a "manual" price for a corrugated container of particular specifications there would be in most instances little difference in the results of the computation, regardless of which manual was used in making the computation. [¶ 49 Ex. I PX-1]

Agreed 59. The actual price charged for corrugated containers was usually referred to in the trade as the "end price," which in most instances was different from any manual price referred to in Finding 58. [¶ 50 Ex. I PX-1]

Agreed 60. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants such information was furnished only in terms of an end price. [¶ 51 Ex. I PX-1]

Agreed 61. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the request involved more than a few different container items. [¶ 52 Ex. I PX-1]

62. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board. [¶ 53 Ex. I PX-1] Agreed

63. Each defendant having its own "manual" or "internal manual," as those terms are defined in Findings 52 and 51, respectively, prepared the same and any revisions thereof independently and without any agreement or understanding with any other defendant. [¶ 8 Ex. I DX-1] Agreed

64. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differ from the price or cost estimates for such container computed under internal manuals of other companies. [¶ 9 Ex. I DX-1] Agreed

65. The great majority of sales of each defendant is made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 annexed to DX-1 and the Charts at pages 47 through 68 of DX-6 contain data illustrative of the foregoing for the several defendants for the period covered by the complaint. [¶ 10 Ex. I DX-1; DX-6] Agreed

66. When Crown Zellerbach in 1957 prepared and issued its manual as described in Finding 52 it adopted and for a period of months followed a policy to adhere to said manual. During that period, no employee had authority to quote or charge prices lower than prices computed on the manual and as a result Crown Zellerbach lost a great volume of business. It was compelled to abandon that policy to avoid losing all its business, and by cutting prices regained the business it lost. [CX-7, pp. 704-5] Agreed

VIII. The Fibre Box Association

Agreed 67. The Fibre Box Association, hereinafter called the "Association," was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers.

Agreed The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky, and was known as the Southeastern Group. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group. [¶¶ 58, 62 Ex. I PX-1]

Agreed 68. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association a weekly summary showing, in square feet, the quantity of corrugated and solid fibre shipments and the dollar value of these shipments.

Agreed From this data the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

Agreed An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard

containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These divisions and zone price trends as well as aggregate shipment figures for each member were issued to each member approximately ten days after the close of each week and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member.

Due to the variety of the materials used and the great variety in construction of the containers as well as differences in the "mix" due to seasonal factors, the indexes referred to above showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold. [¶ 59 Ex. I PX-1] **Agreed**

69. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Finding 68. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the program agenda and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting. [¶ 60 Ex. I PX-1] **Agreed**

Agreed 70. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished most recent price information when requested by a representative of another defendant. [¶ 61 Ex. I PX-1]

Agreed 71. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly. [¶ 63 Ex. I PX-1]

IX. Findings as to Specific Defendants**A. Container Corporation**

A-1. In the trade Container Corporation, after November 15, 1960, was sometimes known as "Mengel" and only for its Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., Lexington, Ky., and Winston-Salem, N. C. locations. Container Corporation acquired a stock interest in Mengel Co. in 1954 and continued to increase its holdings of Mengel common stock, owning approximately 69% by December 1955 and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960 Mengel Co. was merged into Container Corporation. [¶ 1 Ex. I PX-1]

Agreed

A-2. Container Corporation, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

A-3. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 16 Ex. I PX-1]

Agreed

A-4. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested. [¶ 21 Ex. I PX-1]

Agreed

Agreed

A-5. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales managers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961 and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. [¶ 24 Ex. I PX-1]

Agreed

A-6. The extent and frequency with which such information was requested and furnished varied among Container Corporation and the several other defendants and among the plants and customers of Container Corporation. [¶ 31 Ex. I PX-1]

Agreed

A-7. In the circumstances set forth in Findings A-3 and A-4, Container Corporation requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Not

Agreed

A-8. The price information requested and/or furnished by Container Corporation as described in Findings A-3 and A-4 related to the actual prices (or levels) charged customers in past transactions. [CX-4, pp. 152, 173-74]

Agreed

A-9. From time to time between 1958 and 1961, A. S. Clay, Sales Manager for the Winston-Salem Plant of Container Corporation, requested and furnished price information as described in Findings A-3 through A-5. From

time to time between 1955 and 1958, G. W. Colvin, when he was general manager of the Winston-Salem Plant of Container Corporation, and from time to time between 1961 and January 1963, when he was Southeastern Divisional Manager of Container Corporation, requested and furnished price information as described in Findings A-3 through A-5. [¶ 24 Ex. I PX-1; CX-4, pp. 162, 171]

A-10. Each officer or employee of Container Corporation responsible for pricing corrugated containers in the Southeastern United States (with the exception noted in Finding A-5) considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1; ¶ 24 Ex. I PX-1]

Not
Agreed

A-11. As a general rule, pricing decisions were made by Container Corporation at the plant level and the plant sales manager was primarily responsible for making price determinations. During the period between 1961 and January 1963, G. W. Colvin, Southeastern Divisional Manager, always communicated the price information he had received to the sales manager of the specific plant and generally did not communicate any advice or instructions concerning the price to be charged by the sales manager nor was he necessarily consulted by the sales manager concerning the price to be charged. [CX-4, pp. 180-82]

Agreed

A-12. Container Corporation requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Container Corporation from other defend-

Agreed
in Part

ants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Not
Agreed

A-13. Container Corporation had no special policy with regard to quotations made on the basis of information received from competitors. Each officer or employee of Container Corporation responsible for pricing corrugated containers in the Southeastern United States considered that he could make his own decisions concerning the prices to be charged or quoted after he had received price information from competitors. [CX-4, pp. 141-42, 147-48, 191-92]

Agreed
in Part

A-14. When G. W. Colvin furnished price information as described in Finding A-4, Colvin gave no consideration to whether the competitor might quote below the price previously charged that customer by Container Corporation. While Colvin's personal policy was generally not to cut a price that had been given to him, he testified that he knew of no such Container Corporation policy and that there were [infrequent] instances when Container Corporation had cut prices after obtaining price information from competitors and knew that there were some occasions when Container Corporation had its prices cut by competitors after giving price information to them. A. S. Clay had no rule, general practice, personal principle, or personal policy concerning the prices to be charged or quoted after he had received price information from competitors, and in each instance, he made the price determination himself. [¶ 70 Ex. I PX-1; CX-4, pp. 189-92, 141-42, 147-48]

A-15. When a Container Corporation plant sales manager requested and received price information as described in Finding A-3, the sales manager used the information along with Container Corporation's internal manual (which was a cost rather than a sales price manual) as well as his other market information to help him determine whether he was interested in obtaining the business and what price he would charge or quote that customer. The plant sales manager had no set policy with regard to submitting a quotation to a customer at a price lower than that which he had learned from a competitor. In determining his prices, each sales manager attempted to get as much as he could within reason. The sales manager felt no obligation with regard to a competitor who had furnished price information to him, nor was such obligation ever expressed to the sales manager by such a competitor. [CX-4, pp. 133-35, 138, 141-42, 147-48]

Agreed

A-16. In all instances the determination as to the price to be charged or quoted by Container Corporation was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Container Corporation exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

A-17. As stated in Finding A-5, Container Corporation stopped requesting or furnishing price information in January 1963. A study of Container Corporation's analyzed prices at its plants shows that in the nine month period from January to October 1963 average analyzed prices were substantially the same as the average analyzed prices at its plants in the nine month period immediately preceding

Agreed

January 1963. Moreover, the range between the highest and lowest prices in each of its plants in the nine month period before January 1963 was approximately the same as the range in those plants in the nine month period from January to October 1963. [DX-5, pp. 13-24]

Agreed A-18. Container Corporation's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed A-19. Container Corporation's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for the years 1955 to 1963. [DX-6, pp. 27, 29, 30, 31, 33]

Agreed A-20. Container Corporation's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

**Not
Agreed** A-21. In requesting and/or furnishing price information as described in Findings A-3 through A-20 Container Corporation acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

B. Albemarle

B-1. Albemarle, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Regis, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

B-2. On those occasions when Albemarle considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

B-3. When Albemarle received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1] **Agreed**

B-4. The extent and frequency with which such information was requested or furnished varied among Albemarle and the several other defendants. [¶ 31 Ex. I PX-1] **Agreed**

B-5. In the circumstances set forth in Findings B-2 through B-4, Albemarle requested and/or furnished price information as described in such Findings from and/or to each of the other defendants, except Dixie of North Carolina, International, St. Joe and St. Regis. [¶ 32 Ex. I PX-1] **Agreed**

Agreed

B-6. The price information furnished by Albemarle as described in Finding B-3 related to prices charged customers in actual sales or prices actually quoted to customers. [CX-4, pp. 55-56; CX-5, pp. 252-53]

Agreed

B-7. From time to time, Anthony J. Bagley, President of Richmond Container from 1957 to September 9, 1959, and Division Manager of Albemarle after such date, and M. F. Dozier, Sales Manager of Richmond Container to September 9, 1959 and Division Sales Manager of Albemarle after such date, on occasion requested and furnished price information as described in Findings B-2 and B-3. [CX-4, pp. 54-55; CX-5, pp. 239, 245]

Not
Agreed

B-8. Each officer or employee of Albemarle responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed
in Part

B-9. Albemarle requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Albemarle from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

B-10. In all instances the determination as to the price to be charged or quoted by Albemarle was its individual

decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Albemarle exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

B-11. Albemarle's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

B-12. In requesting and/or furnishing price information as described in Findings B-2 through B-11 Albemarle acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1] **Not Agreed**

C. Carolina**Agreed**

C-1. Carolina, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

C-2. On those occasions when Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

C-3. When Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

C-4. The extent and frequency with which such information was requested or furnished varied among Carolina and the several other defendants and among the customers of Carolina. [¶ 31 Ex. I PX-1]

Agreed

C-5. In the circumstances set forth in Findings C-2 through C-4, Carolina requested and/or furnished price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1]

Agreed

C-6. There is no evidence that the price information furnished by Carolina as described in Finding C-3 related

to prices quoted upon which an actual order had not at that time been received from the customer. [CX-5, pp. 364-65]

C-7. Carolina furnished price information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. Agreed

C-8. From time to time C. T. Ingram, Vice President and General Manager of Carolina, and Carter Holbrook, Sales Manager of Carolina, on occasion requested and furnished price information as described in Findings C-2 and C-3. [CX-5, pp. 338-39, 359-60] Agreed

C-9. Each officer or employee of Carolina responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1] Not Agreed

C-10. Carolina requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Carolina from other defendants was taken into account and utilized by Carolina in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] Agreed in Part

C-11. In all instances the determination as to the price to be charged or quoted by Carolina was its individual decision. In deciding whether to seek a particular order Agreed

from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Carolina exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

C-12. Carolina's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

C-13. Carolina's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

C-14. In requesting and/or furnishing price information as described in Findings C-2 through C-13, Carolina acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

D. Continental

D-1. After October 26, 1956, Continental, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

D-2. On those occasions after October 26, 1956, when Continental considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. When Continental received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. Continental neither gave to nor received from St. Joe any price information. [¶¶ 14, 19, 32 Ex. I PX-1]

Agreed

D-3. The extent and frequency with which such information was requested or furnished varied among the plants and customers of Continental. [¶ 31 Ex. I PX-1]

Agreed

D-4. The price information requested or furnished by Continental as described in Findings D-2 and D-3 was "past market," i.e., either the price at which Continental "had sold containers for or offered to sell [containers] for in the past." [CX-5, p. 383, lines 9-22] Quotations were frequently made to customers without ever developing into orders. [e.g. DX-147, 122, 173]

**Not
Agreed**

Agreed

D-5. From time to time between October 26, 1956 and January 1, 1957, and between January 1960 and March 31, 1963, Robert Groner, Jr., as one of Continental's Sales Managers; and from and after January 1, 1962, Jehan B. Johnson, as one of Continental's Sales Managers; and between October 26, 1956 and May 15, 1962, William B. Beams, as one of Continental's Sales Managers, requested and furnished price information as described in Findings D-2 through D-4. [CX-5, pp. 303-04, 368; CX-4, p. 64]

Not
Agreed

D-6. Each officer or employee of Continental responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed
in Part

D-7. Continental requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Continental from other defendants was taken into account and utilized by Continental in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

D-8. When Continental furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. [CX-5, p. 315]

D-9. In all instances the determination as to the price to be charged or quoted by Continental was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Continental exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1; CX-5, p. 312] **Agreed**

D-10. Continental's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

D-11. Continental's price trends also varied from plant to plant, as shown by comparing the price trends of its plants from the date it entered the corrugated container business to the date of the complaint. [DX-6, pp. 31, 33, 39] **Agreed**

D-12. Continental's prices also varied from month to month throughout the period it was in the corrugated container business. [DX-6, pp. 2-20] **Agreed**

D-13. It was Continental's policy with respect to requesting and/or furnishing price information to abide by the 1940 Consent Decree. [CX-5, pp. 315-316] **Not Agreed**

D-14. In requesting and/or furnishing price information as described in Findings D-2 through D-13 Continental acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1; CX-5, pp. 315-316] **Not Agreed**

E. Crown Zellerbach**Agreed**

E-1. Crown Zellerbach, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

E-2. On those occasions when Crown Zellerbach considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

E-3. When Crown Zellerbach received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. [¶ 19 Ex. I PX-1]

Agreed

E-4. The extent and frequency with which such information was requested or furnished varied among Crown Zellerbach and the several other defendants and among the plants and customers of Crown Zellerbach. [¶ 31 Ex. I PX-1]

Agreed

E-5. In the circumstances set forth in Findings E-2 through E-4, Crown Zellerbach requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Agreed

E-6. The price information furnished by Crown Zellerbach as described in Finding E-3 related to price charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the

customer but only after such a quotation was in the hands of the customer. [CX-4, pp. 116-21, 123; CX-7, p. 703]

E-7. From time to time, from and after November 1958, Gordon M. Clark, for a part of said time Sales Manager and later Resident Manager of the Greenville, S.C., plant of Crown Zellerbach, requested and furnished price information as described in Findings E-2 and E-3. [CX-4, pp. 103-04, 116, 123]

Agreed

E-8. Each officer or employee of Crown Zellerbach responsible for pricing corrugated containers in the South-eastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

**Not
Agreed**

E-9. Crown Zellerbach requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Crown Zellerbach from other defendants was taken into account and utilized by Crown Zellerbach in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

**Agreed
in Part**

E-10. When Crown Zellerbach requested price information as described in Finding E-2 from other defendants, it did so because such information gave Crown Zellerbach an opportunity to meet or beat the prices charged or quoted by such other defendants or enabled it to ascertain whether the prices required to obtain business from such purchasers

**Not
Agreed**

were so unattractive that Crown Zellerbach would not desire to make sales at such prices. [CX-4, pp. 123-24]

Agreed
in Part

E-11. When Crown Zellerbach furnished price information as described in Finding E-3 to other defendants, it did so because it gave Crown Zellerbach an insight as to who was actively competing for a particular piece of business. [CX-4, pp. 122-23]

Agreed

E-12. In all instances the determination as to the price to be charged or quoted by Crown Zellerbach was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Crown Zellerbach exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

E-13. Crown Zellerbach's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

E-14. Crown Zellerbach's prices varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

E-15. In requesting and/or furnishing price information as described in Findings E-2 through E-14 Crown Zellerbach acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

F. Dixie and Dixie of North Carolina

F-1. Dixie and its subsidiary, Dixie of North Carolina, are engaged solely in the box business. **Agreed**

(a) They are not part of an integrated company which is also engaged in the paper mill business. The only other non-integrated defendants are Carolina and Tri-State. **Agreed**

(b) As an independent box maker, which had already paid a profit on the paper, and had to make its profit, if any, out of the box, it was particularly sensitive to wide price fluctuations which characterized the industry. [CX-6, pp. 464-65; DX-140] **Not Agreed**

F-2. Dixie, in seeking business for the sale of corrugated containers was in competition with each of the other defendants except Dixie of North Carolina, St. Joe and St. Regis although not necessarily at all times or in all areas or for all purchasers. Dixie of North Carolina was not in competition with Albemarle, Crown Zellerbach, Inland, Miller, Dixie, St. Joe or St. Regis. It was in competition, in seeking business for the sale of corrugated containers, with each of the other ten defendants, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

F-3. On those occasions when Dixie or Dixie of North Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

Agreed

F-4. When Dixie or Dixie of North Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-6, p. 476]

Agreed

F-5. The extent and frequency with which such information was requested or furnished varied among Dixie and the several other defendants and among Dixie of North Carolina and the several other defendants. During differing intervals of time, Dixie did not request from or furnish such information to certain competitors. [¶ 31 Ex. I PX-1; CX-6, p. 474]

Not
Agreed

F-6. H. L. Mitchell, Jr. was President of Dixie and Dixie of North Carolina. His purpose in seeking such information was to verify the accuracy of information secured from customers by salesmen of Dixie. [CX-6, p. 463]

Agreed

F-7. Mitchell found that some of the information furnished by competitors upon request was inaccurate. [CX-6, pp. 467, 477, 482]

Agreed
in Part

F-8. The price information furnished by Dixie in most instances related to a price charged a customer in an actual sale. On occasion Dixie furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. [¶ 34 Ex. I PX-1] The price information requested and/or furnished by Dixie of North Carolina was "the last price he [the competitor or Dixie of North Carolina] got for the item or order." [CX-7, pp. 648-49]

F-9. In the circumstances set forth in Findings F-1 through F-6, Dixie and Dixie of North Carolina requested and/or furnished price information as described in said Findings from and/or to each of the other defendants with which it competed. [¶ 32 Ex. I PX-1] **Agreed**

F-10. From time to time, Mitchell, President of defendant Dixie, requested and/or furnished price information as described in Findings F-3 and F-4. [CX-6, pp. 480-82] **Agreed**

F-11. From time to time, Joseph S. Schwind, Sales Manager for Dixie of North Carolina, requested and/or furnished price information as described in Findings F-3 and F-4. [CX-7, pp. 645-47] **Agreed**

F-12. Mitchell did not expect a competitor not to cut a price furnished by Mitchell or by anyone else at Dixie or Dixie of North Carolina. He gave such information with the hope (based not on any agreement but on his own analysis of his competitor's reaction) that the competitor would not cut any more than necessary to get the business. [CX-6, p. 475] **Not Agreed**

F-13. Mitchell had a policy of not calling the competition if he was going to cut a price; his experience was that some competitors would immediately reduce a price after answering an inquiry from Mitchell. [CX-6, pp. 466, 477; DX-136, 487] **Agreed**

F-14. Dixie and Dixie of North Carolina considered that they could request from or furnish to competitors or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual de- **Not Agreed**

cision. [DX-1, p. 17; CX-6, pp. 465, 476] Neither Mitchell nor Schwind expected to get information each time it was requested by them. [CX-6, pp. 446, 465; CX-7, p. 651]

**Agreed
in Part**

F-15. Dixie and Dixie of North Carolina requested price information from other defendants in order to aid them in making informed pricing and marketing decisions. Price information received by them from other defendants was taken into account and utilized by each of them in individually determining the prices to be charged or quoted by them in the same manner, to the same extent, and with the same effect as price information which they usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; DX-67, 136, 192, 487; DX-6, p. 478]

Agreed

F-16. In all instances the determination as to the price to be charged or quoted by Dixie or Dixie of North Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Dixie and Dixie of North Carolina exercised their own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

F-17. Dixie's price trends and Dixie of North Carolina's price trends differed from those of each of their competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

F-18. Dixie's prices and Dixie of North Carolina's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

**Not
Agreed**

F-19. Dixie, Dixie of North Carolina, and Mitchell were aware of the 1940 consent decree and acted in reliance upon and as contemplated by such decree. [¶ 23 Ex. I DX-1; CX-6, pp. 463, 473]

G. Inland

G-1. Inland, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

G-2. On those occasions when Inland considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

G-3. When Inland received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-7, p. 676] **Agreed**

G-4. The extent and frequency with which such information was requested or furnished varied among Inland and the several other defendants and among the plants and customers of Inland. [¶ 31 Ex. I PX-1] **Agreed**

G-5. In the circumstances set forth in Findings G-2 through G-4, Inland requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

G-6. From time to time, during the period covered by the complaint, Frank M. Talbot, Southern Region Sales Manager for Inland, and Barnell E. Roberts, Sales Mana- **Agreed**

ger of Inland's Macon, Georgia, plant, requested and furnished price information as described in Findings G-2 and G-3. [CX-6, pp. 580, 588; CX-7, pp. 674-75]

Agreed
in Part

G-7. In a written statement issued under date of July 14, 1961, Inland's policy with respect to requesting and furnishing price information from and to other manufacturers of corrugated containers was set forth. It was binding upon all of its Sales Managers, including the said Barnell E. Roberts and Frank Talbot. Such policy was unilaterally and independently adopted by Inland. Such policy, and the deposition testimony of said Roberts and Talbot, establish that:

Agreed
in Part

(a) Inland's purpose in the requesting and furnishing of price information was to enable it to be better informed in making independent price determinations. [DX-151; CX-6, pp. 581, 584-85, 593-94, 608; CX-7, pp. 689, 693]

Agreed

(b) Its policy in this regard was in reliance upon and believed by Inland to have been contemplated by the consent decree referred to in Findings 42 through 47 hereof. [DX-151]

Agreed
in Part

(c) [Inland's policy was to request] Price information was requested from another manufacturer if needed to make an intelligent price decision and if such information was not obtainable from some other source. Such information was [to be sought first from customers] received usually and ordinarily from the purchaser. In some cases, such information was sought to verify a claim of a purchaser (who was attempting to have Inland reduce its price) that another supplier had reduced its price, in cir-

cumstances in which the salesmen doubted the reliability of such claim. [DX-151; CX-6, pp. 581, 584-86, 593-94; CX-7, p. 693]

(d) Price information so received from another manufacturer was taken into account by Inland's Sales Managers in the same manner and with the same effect as like information usually and ordinarily received from the purchasers. [CX-6, pp. 579-82, 593, 608; CX-7, pp. 689, 693] Not Agreed

(e) In a situation in which Inland had a contract with a customer, who was then also being supplied by other manufacturers and during a period when prices had been low for years, and the customer reported that another supplier in the account had reduced its prices, which report the Sales Manager believed doubtful, such Sales Manager would attempt to verify such report with such other supplier because he did not desire to reduce Inland's prices any lower than in fact the prices had been lowered as represented by the customer. [CX-6, pp. 585-86] Agreed

(f) Said policy authorized Inland's Sales Managers to furnish price information requested by other manufacturers within the limits prescribed for requesting such information. Whether to furnish such information upon request was a matter of individual decision by the Sales Managers. It was believed by them that it served Inland's self-interest to furnish such information upon request because they believed that they could not obtain price information from another manufacturer unless they usually furnished price information when requested. [¶ 17 Ex. I DX-1; DX-151; CX-6, pp. 593-94 608] Agreed

Agreed

(g) Said policy and Inland's practice thereunder was to request and furnish only the price of the most recent past sale. [DX-151; CX-6, pp. 582-84, 588-91; CX-7, pp. 690-91]

Agreed

G-8. When Inland furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

G-9. In all instances the determination as to the price to be charged or quoted by Inland was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Inland exercised its own business judgment. [¶ 70 Ex. I PX-1; ¶ 14 Ex. I DX-1]

Agreed

G-10. Inland's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Not

Agreed

G-11. In requesting and/or furnishing price information as described in Findings G-2 through G-10 Inland acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

H. International

H-1. International, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

H-2. Two employees of International were called by plaintiff to testify on deposition—Edward Agar, from 1948-1957 manager of International's Container Division plant in Spring Hill, Louisiana and since 1957 manager for the Southern Region of the Company's Container Division, and Hugh L. Reid, for the past 16 years general manager of International's Container Division plant at Georgetown, South Carolina. [CX-4, pp. 7-8; CX-6, pp. 548-49] **Agreed**

H-3. During the period 1955 to 1963 at times purchasing agents attempted to persuade International to lower its prices by advising International's sales representatives that its prices were too high when compared with those of other suppliers, and offered International the chance to meet a lower price in order to obtain or retain the business. Sometimes the purchasing agent identified the other supplier and price. Sometimes the price information supplied by the purchasing agent was incomplete, inaccurate or misleading. On occasion in the period prior to about June 1962, International made telephone calls to other suppliers to verify the information as to past prices charged which had been supplied by the purchasing agent. [CX-4, pp. 15-16, 26-27, 29-33; CX-6, pp. 559-60; ¶ 11 Ex. I DX-1] **Agreed**

H-4. Communication of price information by International to other suppliers of corrugated containers occurred infrequently, and without any pattern or regularity, and **Agreed in Part**

varied from period to period. Frequency ranged from about 10 or 12 calls a month to about 2 or 3 calls a month including those made as well as received, with many days without any calls and on some occasions 2 or 3 a day. [CX-6; pp. 560, 562, 564-65; CX-4, pp. 16, 21, 22, 25, 32]

Agreed

H-5. International had 23 salesmen in the Southeast making an average of 4 to 5 calls daily on customers and potential customers. In other words, International's salesmen in soliciting business made on the average 92 to 100 calls a day or 1800 to 2000 calls a month on purchasers of corrugated containers who bought on a spot or short-term basis covering immediate or near-term requirements. In 1962 International had 449 customers in the Southeast out of more than 10,000 potential customers. [114, 15 and Table I DX-1]

Agreed

H-6. Agar had broad administrative responsibilities for a number of plants including administration, production, sales and personnel and did not have any direct pricing responsibility; accordingly he had no files showing International's prices and on the infrequent occasions when he was asked for such information by a competitor he obtained it from the plant manager. While Reid had sole pricing authority for the Georgetown plant and had files showing past prices charged by International, he had many other duties in operating the plant and spent only a minor portion of his time in determining prices. [CX-4, pp. 7, 9-10, 21, 25-26, 31-32; CX-6, p. 562]

Agreed

H-7. In the circumstances set forth in Findings H-3 through H-6 and H-8 through H-17, International requested and/or furnished price information as described in said Findings from and/or to each of the other defendants

except Albemarle and St. Joe. One of International's employees, Reid, testified that he was not sure he had ever in the eight-year period in question communicated price information to five of the defendants, and the other International employee, Agar, testified that he did not know four of the 17 other defendants. As to the eight of the defendants about which he was questioned he could not recall any incident when he gave or received any price information from them. [¶32 Ex. I, PX-1; CX-4, pp. 18-20, 22-23; CX-6, pp. 567-71]

H-8. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶17, Ex. I, PX-1] **Agreed**

H-9. International requested price information on past transactions from another supplier at times when International had been invited by a customer to meet the price of such other supplier. [CX-4, pp. 15-16, 29-33; CX-6, pp. 559-60] **Agreed**

H-10. When offered the opportunity by a customer to meet the price of another supplier, International sought information as to past prices charged from such other supplier to verify the customer's information about such supplier's price in those instances where International wanted to make certain it was a real price and the circumstances justified International making an effort to obtain the business of the customer. [CX-6, pp. 559-60] **Agreed**

Agreed

H-11. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested. [¶22, Ex. I, PX-1]

**Not
Agreed**

H-12. Except for one employee more than seven years ago, on those occasions when International communicated price information to or received such information from other suppliers, it limited such communication between it and other suppliers to prices on past, completed transactions. [CX-4, pp. 15-16, 25-27, 32-33; CX-6, p. 565]

Agreed

H-13. In responding to specific requests for price information on past transactions by other suppliers of corrugated containers, International furnished only end prices for the particular corrugated box as to which inquiry was made. [CX-6, p. 561; CX-4, p. 16]

**Agreed
in Part**

H-14. In June 1962 International decided that it would no longer furnish price information to or request such information from other suppliers of corrugated containers. International made no announcement of such decision; those who called requesting information were informed that such information would not be furnished. [CX-4, pp. 16, 26, 28-29; CX-6, p. 560]

Agreed

H-15. During the time when International furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. [CX-6, p. 566; CX-4, p. 33]

**Not
Agreed**

H-16. International's officers and employees considered themselves free to request or furnish or not to request

or furnish past price information from competitors, and whether or not to request or furnish such past price information was their individual decision, except when International decided to stop furnishing or requesting price information, as noted in Finding H-14. [¶17(c), Ex. I, PX-1]

H-17. International requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. The price information received by International from other defendants was taken into account and utilized by International in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶11, 13, 47, 70 Ex. I, PX-1; ¶¶12, 14 Ex. I, DX-1; CX-6, pp. 554, 566] **Agreed in Part**

H-18. There is no evidence that any employee of any defendant ever discussed with any employee of International the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information. **Agreed**

H-19. There is no evidence that any defendant ever made any complaint to International or that International made any complaint to another defendant with respect to price-cutting. [E.g., CX-6, pp. 550-552, 572] **Not Agreed**

Not
Agreed

H-20. International's requesting and furnishing price information was within the authorization of and in reliance on the 1940 Consent Decree. [¶ 23 Ex. I DX-1; DX-2; DX-3]

Not
Agreed

H-21. There is no basis for an inference of an agreement, combination or conspiracy as to International from the fact that it requested and received price information in the manner and to the extent International did so.

Agreed

H-22. As one of the factors in computing a price to offer or charge a customer, International on all occasions used its own internal estimating manual. International's manual was prepared and revised independently by it without any agreement or understanding with any other defendant. International did not give its manual to any competitor or customer but retained it for its own use. International did not discuss its manual, its preparation or revision, with any competitor. [CX-4, pp. 10-11, 13-15; CX-6, pp. 552, 556-558; ¶ 35 Ex. I PX-1; ¶ 8 Ex. I DX-1]

Agreed

H-23. International had no manuals of its competitors except those of National Container Company and Gaylord Container Corp. which had been obtained from customers of International. On infrequent occasions in the period about 1958-1960, with respect to accounts which were then being sold by Gaylord, reference was made to the Gaylord manual as an added aid with other factors in helping the plant manager make up his mind as to the price he would quote the customer. If in those accounts the price of a particular container was less when computed on the Gaylord manual than on International's internal manual, and this was business which Reid desired to retain or obtain based on many other factors as to the desirability of the

business, he would take into consideration the price developed from the Gaylord manual. In a period sometime before 1958 the National Container manual was referred to by Reid in the same way in competing for business at accounts which were being supplied by the National Container Corporation, although with less frequency. [CX-6, pp. 552-58; CX-4, pp. 10-15, 24-25, 33-34; DX-209]

H-24. There was no relationship in the prices developed on International's internal manual and on Gaylord's manual. With respect to some containers International's manual would develop a higher price; with respect to others it would develop a lower price. [CX-6, pp. 556-57; DX-209]

Agreed

H-25. In all instances the determination as to the price to be charged or quoted by International was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, International exercised its own business judgment. [¶70 Ex. I PX-1; CX-4, pp. 10-15; DX-205, 206, 207, 208, 210]

Agreed

H-26. There is no evidence that International intended to avoid or reduce price competition by requesting and furnishing price information in the manner and to the extent that it did so. International increased its capacity to compete by opening new plants in other market areas in the Southeast, in 1957 in Auburndale, Florida, and in 1962 in Statesville, North Carolina. [CX-4, pp. 15-16, 21, 26-27, 29-33; CX-6, pp. 559-60; Complaint par. 5; Answer of International par. 5; DX-5; pp. 48-51]

**Agreed
in Part**

Agreed

H-27. During the period 1955 to 1963 the trend of International's prices has been downward, while at the same time costs have increased. International continually instructed its employees to attempt to improve earnings by obtaining the highest possible prices for corrugated containers. [DX-6, p. 1; DX-205, 206, 207, 208, 209]

Agreed

H-28. International lost customers to and gained customers from other suppliers of corrugated containers on the basis of price. In 1960, out of 408 separate accounts in the Georgetown and Auburndale plants, 162 accounts, or almost 40%, were totally new accounts gained by these plants, while 64 accounts represented customers lost. Of the 408 accounts in 1960, 110 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's sales to that customer. Thus in 1960, a total of 336 out of 408 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). In 1961, out of 447 separate accounts at these same plants, 135 accounts, or 30%, were totally new accounts; 96 were lost. Of the 447 accounts in 1961, 143 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's sales to that customer. Thus in 1961 a total of 384 out of 447 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). In 1962, out of 449 separate accounts at those plants, 116 accounts, or 28%, were totally new accounts; at the same time more than 28% of the accounts or 114, were lost. Of the 449 accounts in 1962, 184 represented customers where in each case International's sales either rose to more than 150% or declined to less than 50% of the preceding year's

sales to that customer. Thus in 1962, a total of 414 out of 449 accounts were involved in shifts of business to or from International—either totally or substantially (i.e., one-half or more). These figures are representative of the entire period covered by the complaint. [CX-4, pp. 27-28; ¶ 5 Ex. 1 and Tables 1 and 2 DX-1]

H-29. International's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

H-30. International's price trends also varied from plant to plant, as shown by comparing the Georgetown and Auburndale plants' price trends for 1961 and for 1955-1963. [DX-6, pp. 28, 34, 39, 45]

Agreed

H-31. International's prices also varied from month to month throughout the period covered by the complaint. [DX-6, pp. 2-20]

Agreed

H-32. As stated in Finding H-14, International stopped requesting or furnishing price information in June 1962. A study of International's analyzed prices at its Auburn-dale, Florida, and Georgetown, South Carolina, plants shows that in the twelve-month period after June 1962 average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June 1962. Moreover, the range between the highest and lowest prices in the Georgetown and Auburndale plants in the year before June 1962 was approximately the same as the range in those plants in the year following June 1962. [DX-5, pp. 49-52]

Agreed

I. Mead**Agreed**

I-1. Mead, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not at all times or in all areas or for all purchasers. [¶¶ 3, 9 Ex. I PX-1]

Agreed

I-2. On those occasions when prior to 1961, and thereafter under the circumstances set forth in Findings I-5 and I-6:

Agreed

(a) Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 18 Ex. I PX-1]

Agreed

(b) Mead received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually, the information requested was furnished. [¶ 23 Ex. I PX-1]

Agreed

(c) During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

I-3. The extent and frequency with which such information was requested or furnished varied among Mead and the several other defendants and among the plants and customers of Mead. [¶ 31 Ex. I PX-1]

I-4. The price information which Mead requested and/or furnished as described in Findings I-2(a), (b) and (c) and I-3: **Agreed**

(a) Was requested and/or furnished from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

(b) Related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer. [CX-4, pp. 92-97] **Agreed**

I-5. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers. In the fall of 1961 the Containers Division of Mead, at the request of its Southeastern Regional Sales Manager, Virgil C. Shutze, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally. Thereafter, said Virgil C. Shutze relaxed said prohibition to some extent to District Sales Managers under his supervision. Said Virgil C. Shutze, as Southeastern Regional Sales Manager for Mead's Containers Division, had jurisdiction over Florida, Georgia and Tennessee. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead's Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants in the circumstances and as described in Findings I-2(a), (b) and (c), I-3, I-4(a), I-4(b), I-6, **Agreed**

I-11(a-d), I-12 and I-13. In the spring of 1962, Mead called its Southeastern Regional Sales Manager and the District Sales Managers of Mead's Containers Division to Mead's head office in Dayton, Ohio, at which Mead's policy, as enunciated in the directive referred to in Finding I-5, was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced. This has been Mead's policy since the spring of 1962. [¶¶26-30 Ex. I PX-1; CX-7, pp. 662-65; CX-4, p. 87; CX-6, p. 603]

Agreed

I-6. In the fall of 1961 Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding I-5, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels [in accounts for which Mead was competing]. [¶¶ 11, 56 Ex. I PX-1; CX-7, pp. 663-65]

Agreed

I-7. Mead stopped requesting or furnishing price information as described in Finding I-5. A study of Mead's

analyzed prices at its Atlanta, Georgia, Durham, North Carolina and Miami, Florida, plants shows that in the twelve-month period after April, 1962 average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June, 1961 [DX-5, pp. 53-58]

I-8. On those occasions when Mead did seek and receive price information from another defendant: **Agreed**

(a) Mead sought such price information only when no other source of such information was available, or when it had obtained recent price information from the purchaser and desired to ascertain the accuracy of such information. [¶¶ 13, 18 Ex. I PX-1; CX-4, p. 99] **Agreed**

(b) Mead requested such price information for the reasons set forth in Finding I-8(a), in order to aid it in making informed pricing and marketing decisions. The price information received by Mead from other defendants was taken into account and utilized by Mead in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47 and 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] **Agreed in Part**

(c) Many factors influenced Mead's decision in making a price determination, and in making such a decision, Mead exercised its own business judgment. A price believed to have been most recently charged or quoted by a competitor, when Mead believed it had sufficient basis for such belief, was only one of **Agreed**

many factors influencing Mead's pricing decision.
[¶ 14 Ex. I DX-1]

**Agreed
in Part**

(d) In many instances, depending upon particular circumstances, Mead would quote lower or higher prices than that indicated by its information as to the most recent price charged the customer, from whatever source the information was obtained; and in all instances the determination as to the price to be charged or quoted was Mead's individual decision.
[¶ 70 Ex. I PX-1]

Agreed

I-9. On those occasions prior to 1961, and thereafter under the circumstances set forth in Findings I-5 and I-6 when competitors requested price information, Mead usually furnished price information to that competitor and hoped that doing so would prompt that competitor to furnish price information to Mead on those subsequent occasions when Mead considered it necessary to request price information. [CX-4, p. 98]

**Not
Agreed**

I-10. Mead's officers and employees responsible for pricing corrugated containers in the Southeastern United States felt free (with the exceptions noted in Finding I-5) to request or not to request and to give or refuse to give price information to competitors; and whether to request or furnish such information was an individual decision.
[¶ 17(c) Ex. I DX-1]

Agreed

I-11. During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

I-12. Mead's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

I-13. Mead's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 26, 33, 35] **Agreed**

I-14. Mead's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

I-15. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Mead exercised its own business judgment. **Agreed**

I-16. In requesting and/or furnishing price information as described in Findings I-2 through I-15 Mead acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]. **Not Agreed**

J. Miller**Agreed**

J-1. Miller, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

J-2. On those occasions when Miller considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

J-3. When Miller received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

J-4. The extent and frequency with which such information was requested or furnished varied among Miller and the several other defendants. [¶ 31 Ex. I PX-1]

Agreed

J-5. In the circumstances set forth in Findings J-2 through J-4, Miller requested and/or furnished price information as described in said Findings from and/or to each of the other defendants except St. Joe and St. Regis. [¶ 32 Ex. I PX-1]

Agreed

J-6. From time to time, Harold P. Kyle, as President of Miller, and William M. Noftsinger, as Vice President and Sales Manager of Miller, gave and received price information as described in Findings J-2 and J-3. [CX-6, pp. 425-27, 496-99]

J-7. Each officer of Miller responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Not
Agreed

J-8. Miller requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Miller from other defendants was taken into account and utilized by Miller in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed
in Part

J-9. When Miller furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

Agreed

J-10. When Miller furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

J-11. In all instances the determination as to the price to be charged or quoted by Miller was its individual de-

Agreed

cision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Miller exercised its own business judgment.

Agreed

J-12. Miller's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

**Not
Agreed**

J-13. In requesting and/or furnishing price information as described in Findings J-2 through J-12, Miller acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

K. Owens-Illinois

K-1. Owens-Illinois, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

K-2. On those occasions when Owens-Illinois considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

K-3. When Owens-Illinois received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-5, pp. 211-12; CX-7, pp. 633-36] **Agreed**

K-4. The extent and frequency with which such information was requested or furnished varied among Owens-Illinois and the several other defendants and among the plants and customers of Owens-Illinois. [¶ 31 Ex. I PX-1] **Agreed**

K-5. In the circumstances set forth in Findings K-2 through K-4, Owens-Illinois requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

K-6. There is no evidence that the price information furnished by Owens-Illinois as described in Finding K-3 related to prices quoted upon which an actual order had not **Agreed**

at that time been received from the customer. [CX-5, p. 214; CX-7, pp. 627-35]

Agreed

K-7. From time to time, from and after October 1961, Thomas M. Cox, Jr., General Manager of the Southeastern Region of the Forest Products Division of Owens-Illinois, and from time to time, from and after the Spring of 1958, Kenneth E. Rosenbaum, for part of said time Sales Manager and later General Manager of the Salisbury, N. C., plant of Owens-Illinois, on occasion requested and furnished price information as described in Findings K-2 and K-3. [CX-5, pp. 207, 210-14; CX-7, pp. 628-33]

Not

Agreed

K-10. Each officer or employee of Owens-Illinois responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed

in Part

K-11. Owens-Illinois requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Owens-Illinois from other defendants was taken into account and utilized by Owens-Illinois in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Agreed

K-12. When Owens-Illinois furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price informa-

tion from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

K-13. When Owens-Illinois furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. **Agreed**

K-14. In all instances the determination as to the price to be charged or quoted by Owens-Illinois was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Owens-Illinois exercised its own business judgment. **Agreed**

K-15. Owens-Illinois' price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

K-16. Owens-Illinois' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 26, 27, 32, 35] **Agreed**

K-17. Owens-Illinois' prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

K-18. In requesting and/or furnishing price information as described in Findings K-2 through K-17, Owens-Illinois acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1] **Not Agreed**

L. St. Joe**Agreed**

L-1. St. Joe, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie, Dixie of North Carolina, and Miller, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

L-2. On those occasions when St. Joe considered it necessary to ascertain the accuracy of a customer's report of a price charged by another defendant or to ascertain from another defendant the most recent price charged to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

L-3. When St. Joe received a request from another defendant for the most recent price charged to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1; CX-7, p. 720]

**Agreed
in Part**

L-4. St. Joe requested or furnished price information from or to other defendants infrequently [, but when necessary]. [CX-7, p. 716]

Agreed

L-5. In the circumstances set forth in Findings L-2 through L-4, St. Joe requested and/or furnished price information from and/or to Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia, and Weyerhaeuser. [¶ 32 Ex. I PX-1]

Agreed

L-6. St. Joe neither furnished nor requested any price information except a price charged the customer in an

actual sale. [CX-7, pp. 710-712, 716, 721] No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices. [¶ 16 Ex. I DX-1]

L-7. When St. Joe requested or furnished price information, it was done exclusively by telephone. [CX-7, p. 714] **Agreed**

L-8. St. Joe would request price information from another defendant only after St. Joe had analyzed the business and determined that it was desirable from the standpoint of type of linerboard required, contribution to plant product mix, customer's credit standing, and other relevant factors. St. Joe then would not request price information from another defendant unless it did not have enough information itself to determine a price, had not received price information from a customer, and did not have its own past price record for that customer. [CX-7, pp. 715-16] **Agreed**

L-9. St. Joe requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by St. Joe from other defendants was taken into account and utilized by it in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; CX-7, pp. 713-716] **Agreed in Part**

L-10. When St. Joe furnished another defendant, upon request, the most recent price charged to a specific customer it did so, believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary **Agreed**

to request such information, unless it usually furnished price information when requested by such other defendant. When St. Joe furnished price information to another defendant, St. Joe had no assurance that it would be able to obtain similar price information if it requested it on another occasion. [CX-7, p. 721]

Agreed

L-11. St. Joe had no company policy as to furnishing or requesting price information to or from other defendants. [CX-5, p. 321] The entire authority for pricing containers was left to its General Managers for its corrugated container plants at Port St. Joe, Fla. and Birmingham, Ala. [CX-5, p. 319; CX-7, p. 720] No one at its corporate headquarters in Jacksonville, Fla., had any responsibility for pricing specific customers, nor did they receive any reports from the General Managers showing any prices for specific customers. [CX-5, p. 319]

Not
Agreed

L-12. Each officer or employee of St. Joe responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed

L-13. When St. Joe furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

L-14. In all instances the determination as to the price to be charged or quoted by St. Joe was its individual decision. In deciding whether to seek a particular order from

a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Joe exercised its own business judgment.

L-15. St. Joe's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

L-16. St. Joe's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 27, 29, 45] **Agreed**

L-17. St. Joe's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

L-18. In requesting and/or furnishing price information as described in Findings L-2 through L-17 St. Joe acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1] **Not Agreed**

M. St. Regis**Agreed**

M-1. St. Regis, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Albemarle, Dixie, Dixie of North Carolina and Miller, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

M-2. On the occasions when St. Regis considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer, such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 32 Ex. I PX-1]

Agreed

M-3. When St. Regis received a request from another defendant for the most recent price to a specific customer for corrugated containers, such information was sometimes, but not always, furnished. [¶ 19 Ex. I PX-1; CX-5, p. 224]

Agreed

M-4. The extent and frequency with which such information was requested or furnished varied among St. Regis and the several other defendants and among plants and customers of St. Regis. [¶ 31 Ex. I PX-1]

Agreed

M-5. In the circumstances set forth in Findings M-1 through M-4 St. Regis requested and/or furnished price information as described in said Findings from and/or to each of the defendants except Albemarle, Dixie, Dixie of North Carolina, and Miller. [¶ 32 Ex. I PX-1]

Agreed

M-6. The price information requested or furnished by St. Regis as described in Findings M-1 through M-5 related to prices charged customers in completed sales in which the customer had been billed. [CX-5, pp. 222-23]

M-7. From time to time, from and after October 1958, **Agreed**
W. L. Diggs, as Southern District Manager for St. Regis,
requested or furnished price information as described in
Finding M-6. [CX-5, p. 224]

M-8. Each officer or employee of St. Regis responsible **Not**
for pricing corrugated containers in the Southeastern **Agreed**
United States considered that he could request from or fur-
nish to competitors, or not request from or furnish to com-
petitors information as to prices for corrugated containers,
and whether or not to request or furnish such information
was an individual decision. [¶ 17 Ex. I DX-1]

M-9. Price information received by St. Regis' officers or **Not**
employees from other defendants was given consideration **Agreed**
in determining the prices to be charged or quoted by St.
Regis in the same manner and with the same effect as price
information received from customers. [¶¶ 11, 13, 47, 70 Ex.
I PX-1; ¶¶ 12 and 14 Ex. I DX-1]

M-10. When St. Regis furnished or requested such **Agreed**
price information, it furnished such information only in
response to a competitor's request and was supplied such
information only pursuant to its own specific request.

M-11. In all instances the determination as to the price **Agreed**
to be charged or quoted by St. Regis was its individual
decision. In deciding whether to seek a particular order
from a particular customer, or whether to offer to sell a
particular container, and in determining the price to be
charged or quoted, St. Regis exercised its own business
judgment.

Agreed M-12. St. Regis' price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed M-13. St. Regis' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 27, 29, 35]

Agreed M-14. St. Regis' prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not Agreed M-15. In requesting and/or furnishing price information as described in Findings M-2 through M-14 Container Corporation acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1]

N. Tri-State

N-1. Tri-State, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

N-2. On those occasions when Tri-State considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

N-3. When Tri-State received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and the information furnished was accurate. [¶ 19 Ex. I PX-1] **Agreed**

N-4. In the circumstances set forth in Findings N-2 and N-3 Tri-State requested and/or furnished price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1] **Agreed**

N-5. From time to time, during the period covered by the complaint, Alan McDonald, Sales Manager for Tri-State, requested and furnished price information as described in Findings N-2 and N-3. [CX-6, pp. 448-50] **Agreed**

N-6. The price information requested and/or furnished by Tri-State as described in Findings N-2 and N-3 related to consummated sales. [CX-6, pp. 446-47] **Agreed**

Not
Agreed

N-7. Price information received by Tri-State from other defendants was taken into account by Tri-State in individually determining the prices to be charged or quoted by it in the same manner and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

Not
Agreed

N-8. Each officer or employee of Tri-State responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed

N-9. When Tri-State furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

N-10. In all instances the determination as to the price to be charged or quoted by Tri-State was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Tri-State exercised its own business judgment.

Agreed

N-11. Tri-State's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

N-12. Tri-State was cognizant of the existence of the consent decree referred to in Findings 45 through 50 hereof and relied upon the terms thereof. [¶ 23 Ex. I DX-1]

O. Union-Camp

O-1. Union-Camp, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

O-2. On those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. However, during the period from July 16, 1963 to October 10, 1963 (during which period Union-Camp was making a general increase in prices to its customers) Union-Camp neither requested nor furnished such price information. [¶ 15 Ex. I PX-1; CX-7, pp. 770-71] **Agreed**

O-3. When Union-Camp received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 20 Ex. I PX-1; CX-5, pp. 280-81; CX-7, pp. 633-36] **Agreed**

O-4 The extent and frequency with which such information was requested or furnished varied among Union-Camp and the several other defendants and among the plants and customers of Union-Camp. Union-Camp, at its Spartanburg plant, received four or five requests per week. [¶ 31 Ex. I PX-1, CX-5, p. 281] **Agreed**

O-5. In the circumstances set forth in Findings O-2 through O-4, Union-Camp requested and/or furnished **Agreed**

price information as described in said Findings from and/or to each of the other defendants, except St. Joe. [¶ 32 Ex. I PX-1; CX-5, p. 293]

Agreed

O-6. The price information furnished by Union-Camp as described in Findings O-2 through O-5 was the price at which it had sold or quoted to a specific customer. The plant managers of Union-Camp were authorized to give such price information at the request of a competitor. [CX-7, pp. 758-60]

**Not
Agreed**

O-7. In requesting and/or furnishing price information as described in Findings O-2 through O-6, Union-Camp acted in reliance upon and as contemplated by the 1940 Consent Decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

Agreed

O-8. During the time when Union-Camp furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

**Not
Agreed**

O-9. Each officer or employee of Union-Camp responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was his individual decision (with the exception of the brief period in 1963, noted in Finding O-2, when Union-Camp was increasing its prices). [¶ 17 Ex. I DX-1]

O-10. The price information received by Union-Camp from other defendants was taken into account by Union-Camp in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1; DX-373 through 619] **Agreed in Part**

O-11. Lewis A. Wulff, from time to time, from and after July 1, 1963 until July 10, and from October 10 until October 14, 1963, as Southeastern Regional Sales Manager for Union-Camp; Frank B. Grimes, from January 1, 1960 until July 16, 1963, as Sales Manager of the Spartanburg, South Carolina, plant of Union-Camp; John I. Pritchett, during part or all of the period from December 1, 1959 until July 16, 1963, as an employee of Union-Camp; and J. E. Faulkner, Jr., from December 1, 1959 until July 16, 1963, as Sales Manager of the Jamestown plant of Union-Camp, requested and furnished price information as described in Findings O-2 et seq. above. [CX-5, pp. 277, 280-82; CX-7, pp. 758-61, 764; DX-450] **Agreed**

O-12. When Grimes, and the other Union-Camp plant managers referred to in Finding O-11 furnished most recent price information to a competitor, they were following a Union-Camp policy which permitted its plant managers to give this information in the hope that, when they needed it, the competitor, in turn, would furnish such information. Grimes believed he could not expect to receive such information unless he gave it. In addition, by furnishing such information to another defendant Union-Camp knows the source of some of the competition it will **Agreed**

meet for a particular piece of business. [CX-5, pp. 287, 296; CX-7, p. 757]

Agreed

O-13. Union-Camp requested most recent price information to enable it to determine whether, in a particular account and at a particular time, it wanted to meet a competitor's price, quote higher, or quote lower. [CX-5, pp. 283-87, 298-99]

Agreed

O-14. In all instances the determination as to the price to be charged or quoted by Union-Camp was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Union-Camp exercised its own business judgment.

Agreed

O-15. Union-Camp's price trends differed from those of each of its competitors and there is no parallel between them.

P. West Virginia

P-1. West Virginia, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1] **Agreed**

P-2. On those occasions when West Virginia considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1] **Agreed**

P-3. When West Virginia received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished. [¶ 19 Ex. I PX-1] **Agreed**

P-4. The extent and frequency with which such information was requested or furnished varied among West Virginia and the several other defendants and among the plants and customers of West Virginia. [¶ 31 Ex. I PX-1] **Agreed**

P-5. In the circumstances set forth in Findings P-2 through P-4, West Virginia requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1] **Agreed**

P-6. The price information requested and/or furnished by West Virginia as described in Findings P-2 through P-4 related to prices charged customers in actual sales, or to prices quoted upon, which an actual order had not at that **Agreed in Part**

time been received from the customer but only after such a quotation was in the hands of or had been sent forward to the customer as required by company policy. [CX-6, pp. 529-31]

Agreed

P-7. From time to time, during the period covered by the complaint, David B. Orcutt, Jr., Richmond District Sales Manager of West Virginia, requested and furnished price information as described in Findings P-2 and P-3. From time to time, from and after November 1959, Joseph T. Piemonte, Sales Manager of the Richmond Region of West Virginia furnished to three competitors information relating to prices charged customers in completed sales only, but he did not request any price information from others. [CX-6, pp. 533-35, 543-46]

Not Agreed

P-8. Each officer or employee of West Virginia responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1]

Agreed in Part

P-9. West Virginia requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by West Virginia from other defendants was taken into account by West Virginia in individually determining the prices to be charged or quoted by it in the same manner and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1]

P-10. When West Virginia furnished another defendant, upon the latter's request, price information it did so hoping that such information would be given to it on those occasions when it might want such information. [CX-6, pp. 536] **Agreed**

P-11. When West Virginia furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request. **Agreed**

P-12. In all instances the determination as to the price to be charged or quoted by West Virginia was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, West Virginia exercised its own business judgment. **Agreed**

P-13. West Virginia's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46] **Agreed**

P-14. West Virginia's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 31, 32] **Agreed**

P-15. West Virginia's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20] **Agreed**

P-16. In requesting and/or furnishing price information as described in Findings P-2 through P-15, West Virginia acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50. [¶ 23 Ex. I DX-1] **Not Agreed**

Q. Weyerhaeuser**Agreed**

Q-1. Weyerhaeuser, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants although not necessarily at all times or in all areas or for all purchasers. [¶ 9 Ex. I PX-1]

Agreed

Q-2. On those occasions when Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers. [¶ 14 Ex. I PX-1]

Agreed

Q-3. When Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and on those occasions when the information was furnished it was accurate. [¶ 19 Ex. I PX-1]

Agreed

Q-4. The extent and frequency with which such information was requested or furnished varied among Weyerhaeuser and the several other defendants and among the plants and customers of Weyerhaeuser. [¶ 31 Ex. I PX-1]

Agreed

Q-5. In the circumstances set forth in Findings Q-2 through Q-4, Weyerhaeuser requested and/or furnished price information as described in said Findings from and/or to each of the other defendants. [¶ 32 Ex. I PX-1]

Agreed

Q-6. The price information requested and/or furnished by Weyerhaeuser as described in Findings Q-2 through Q-5 related to prices charged customers in actual sales [CX-5, p. 267; CX-7, p. 729]

Q-7. From time to time, from and after the middle of August, 1961 to October 13, 1963, George W. Elliott, Jr., Sales Manager of the Charlotte Plant of Weyerhaeuser and from time to time, from and after June, 1962 to October 13, 1963, Ivan D. Wood, Vice President and Manager of the Shipping Container Division of Weyerhaeuser, on occasion requested and furnished price information as described in Findings Q-2 and Q-3. [CX-5, pp. 264, 266; CX-7, pp. 724, 727-729] **Agreed**

Q-8. Each officer or employee of Weyerhaeuser responsible for pricing corrugated containers in the Southeastern United States considered that he could request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision. [¶ 17 Ex. I DX-1] **Not Agreed**

Q-9. Weyerhaeuser requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Weyerhaeuser from other defendants was taken into account and utilized by Weyerhaeuser in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers. [¶¶ 11, 13, 47, 70 Ex. I PX-1; ¶¶ 12, 14 Ex. I DX-1] **Agreed in Part**

Q-10. When an employee of Weyerhaeuser made his individual decision to furnish another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, he did so believing that it was unlikely that he could obtain price information from such **Agreed**

other defendant, on those occasions when he might consider it necessary to request such information, unless he furnished price information when requested by such other defendant.

Agreed

Q-11. When Weyerhaeuser furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

Agreed

Q-12. In all instances the determination as to the price to be charged or quoted by Weyerhaeuser was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Weyerhaeuser exercised its own business judgment.

Agreed

Q-13. Weyerhaeuser's price trends differed from those of each of its competitors and there is no parallel between them. [DX-6, pp. 25-46]

Agreed

Q-14. Weyerhaeuser's price trends also varied from plant to plant as shown by comparing the price trends of its plants for 1955-1963. [DX-6, pp. 28, 29, 31, 32]

Agreed

Q-15. Weyerhaeuser's prices also varied from month to month throughout the period covered by the Complaint. [DX-6, pp. 2-20]

Not
Agreed

Q-16. In requesting and/or furnishing price information as described in Findings Q-2 through Q-15, Weyerhaeuser acted in reliance upon and as contemplated by the consent decree referred to in Findings 45 through 50 hereof. [¶ 23 Ex. I DX-1]

X. CONCLUSION

1. Plaintiff concedes that the facts do not evidence an express agreement to exchange price information or to restrict competition; rather, plaintiff contends and defendants deny that the Court may infer an agreement to exchange information as to the most recent prices for corrugated containers and may further infer an agreement to restrict competition. **Agreed**
2. The evidence in this case does not prove an agreement among the defendants, or any of them, to exchange, or to furnish on request, information as to the most recent price for corrugated containers. **Not Agreed**
3. The evidence in this case does not prove an agreement among the defendants, or any of them, to restrict competition. **Not Agreed**
4. The evidence in this case does not support an inference that there was an agreement among the defendants, or any of them, to exchange, or to furnish on request, information as to the most recent price for corrugated containers or to restrict price competition. **Not Agreed**
5. Plaintiff has also conceded that even were the Court to infer an agreement to exchange price information, it would still be necessary for plaintiff to prove that such agreement had the purpose and effect of unreasonably restricting price competition. **Not Agreed**
6. Plaintiff in consenting to, and the United States District Court in entering, the decree referred to in Finding 45, recognized the right to communicate price information, **Not Agreed**

and contemplated and approved the natural consequences of such communication.

**Not
Agreed**

7. The requesting and furnishing of price information by the defendants was not for the purpose and did not have the effect of eliminating, reducing, minimizing, or restricting price competition.

PART II

Defendants' Restatement of Certain Paragraphs in Plaintiff's Proposed Findings of Fact.*

Restatement of Paragraph 16

In or about May or June 1959, there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation (a company which then had been partially acquired by Union-Camp in March 1959, and later fully acquired in September 1959, and merged into Union-Camp in December 1959), upon entering the meeting announced that their company was increasing its set-up charge from \$15 to \$25 and thereupon left the meeting. No comments were made after this announcement while Mr. Pritchett or Mr. Faulkner were present nor was there any comment or discussion after they left. [¶ 64 Ex. I PX-1; CX-7, pp. 622-23] Agreed in Part

On July 20, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller and Owens-Illinois were present and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges. [¶ 65 Ex. I PX-1] Agreed

The representative of Owens-Illinois present at the meetings described in Paragraph 16 was Kenneth E. Rosenbaum. [CX-7, pp. 618, 622] Agreed

* See Explanatory Note above.

Restatement of Paragraph 17**Agreed**

Mr. Rosenbaum was present when Mr. Roberts made the statement with respect to Spring Cotton Mills referred to in Paragraph 94. Owens-Illinois was not a supplier to Spring Cotton Mills. [CX-7, pp. 625-27]

Restatement of Paragraph 21**Agreed**

The representative of Crown Zellerbach present at the meetings described in Paragraph 16 was Gordon M. Clark. [CX-4, pp. 105-06, 108]

Restatement of Paragraph 22**Agreed**

Prior to July 27, 1961, Inland and Crown Zellerbach, among others, had announced general increases in their respective prices for corrugated containers in varying amounts, effective on varying dates. Subsequent to these public announcements a regularly scheduled meeting of Zones 10 and 11 of the Fibre Box Association was held on July 27, 1961, at which legal counsel was present. On July 31, 1961, Lee J. Ross, then manager of the Atlantic plant of Crown Zellerbach, wrote an inter-office memorandum to his superior in that company, as follows:

"As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco.

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container	Continental Can	Weyerhaeuser
Dixie Container	Union Bag	International
Mead	Maxwell Bros.	Paper
Mengel	H. & D.	

Not in attendance:

Owens-Illinois	Container Corp.
Carolina Container	St. Regis
Tri-State	Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full."

[¶¶ 56, 60 Ex. I PX-1; ¶ 2(b) Schedule to PX-3; PX-48; DX-144, 150]

Restatement of Paragraph 27

The representative of Container Corporation present at the meeting described in the second paragraph of Paragraph 16 was Adolphus S. Clay. Agreed

Restatement of Paragraph 28

In 1960 or 1961 Mr. Clay was told by the purchasing agent at the Drexel Furniture Company that Drexel had been charged prices by other suppliers which were lower than prices charged by Container Corporation. Clay requested and received from competitors information as to Agreed

the prices charged Drexel, which differed from information which Clay had received from Drexel. Subsequently, Clay asked employees of Tri-State, Owens-Illinois and he believes International if they had recently reduced prices to Drexel, and Alan McDonald of Tri-State said that he had reduced his prices to Drexel roughly 3%. Because of this price competition Clay had lost a great deal of his business in this account. Clay expressed his intention to place his prices in a competitive position based on information given him by the purchasing agent. Subsequently Clay reduced his prices to Drexel 5%. [CX-4, pp. 148-149, 153-155]

Restatement of Paragraph 31

See infra under Restatement of 59 (and 31).

Restatement of Paragraph 42

**Not
Agreed**

H. L. Mitchell of Dixie testified that since March, 1962 95% of his competitors were "off the air, that is, no communication," and that during that period prices of corrugated boxes have "deteriorated in some instances 40 percent, simply for lack of communication." There is no evidence which supports this testimony. The facts are that Dixie competed with 14 of the defendants, that at no time during that period were more than four of the defendants "off the air," and that prices to particular accounts often "deteriorated" 40% or more when their suppliers were not "off the air." [¶ 9, 14 thru 30 Ex. I PX-1; CX p. 464; Table 3 DX-1]

Restatement of Paragraph 44

In or about February, 1962, Mitchell and representatives of Miller, Albemarle, Continental and West Virginia met in Mitchell's office at the latter's invitation after the paper mills had announced a price increase for linerboard, the basic raw material for corrugated containers. Mitchell inquired whether the others had increased or were increasing their prices to recover these increased costs.* Prior to the meeting, Continental had increased its container prices and had announced that fact to its customers, and Continental's representative at the meeting so stated. Also, prior to the meeting, West Virginia had made the decision to attempt to increase prices of containers to recover such increased cost, and its representative so stated at the meeting. "The meeting broke up as if it had not started." [CX-5, pp. 393-398; CX-6, pp. 483-486; CX-6, pp. 508-510; CX-6, pp. 524-527]

**Agreed
in Part**

* Defendants are willing to substitute the following language from Mitchell's testimony in substitution for the underlined language:

Mitchell testified that "I would think, knowing myself, that I called these people together to ask them, 'Are you going to get this *** money back or not?'"

Restatement of Paragraph 45

The representative of Dixie present at the meeting described in Paragraph 73 was Herbert L. Mitchell. [CX-6, p. 438]

**Not
Agreed**

Restatement of Paragraph 46

Joseph Schwind, Sales Manager for Dixie of North Carolina, attended the meeting at Dimizzio's Restaurant in

Agreed

Salisbury, North Carolina. At this time he had just started as Sales Manager in Morganton, and his purpose in going was to meet his competitors. [CX-7, p. 652]

Agreed

Mitchell, President of Dixie, attended the meeting at Dimizzio's Restaurant in Salisbury, North Carolina. His primary purpose in attending was to bring Schwind, who had just been put in charge of the Morganton plant to introduce him to as many of his competitors as possible. [CX-6, p. 490]

Restatement of Paragraph 47

**Not
Agreed**

H. L. Mitchell, immediately after a Fibre Box Association meeting, in a conversation with Anthony J. Bagley, representing Richmond Container, suggested that Richmond Container might raise its prices to Burlington Industries, but Bagley refused to do so. [CX-5, p. 49]

Restatement of Paragraph 53

Agreed

David B. Orcutt, Jr. was the representative of West Virginia who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44, above. Prior to the meeting West Virginia had decided to attempt to increase its prices sufficiently to recover the increased cost of linerboard as previously announced by the linerboard mills and Orcutt stated, at the meeting, that West Virginia personnel had been instructed to do so. Orcutt did not know whether the other defendants whose representatives attended the meeting attempted to increase their prices. [CX-6, pp. 524-527]

Restatement of Paragraph 58

Robert Groner, Jr., on or about June 30, 1961, at a meeting of the Fibre Box Association attended by one or more of the other defendants and the Fibre Box Association's counsel, delivered a speech in which he reaffirmed Continental's intention to abide by the antitrust laws and the 1940 Consent Decree. Groner announced certain of Continental's sales policies which are public information. Groner said that Continental would attempt to sell its product at a profit. He noted that one of the prime causes of unprofitable pricing was the deception practiced on salesmen by purchasing agents when those purchasing agents were asked the price which they were currently paying for corrugated containers. He said that, to defeat this deception, his company would endeavor to determine the most recent price charged to a new customer before quoting blindly. Groner's speech made no reference to specific customers. Groner said that "anyone who has any real or imaginary problems with our firm can call me," and stated that such conversations would be "strickly [sic] legal according to the interpretation of the law by Malcolm White [Whyte]," the General Counsel of the Fibre Box Association. [PX-47]

Agreed
in Part

Restatement of Paragraph 59 (and 31)

On August 8, 1961, Groner, then Regional Sales Manager of the Southern District for Continental, advised Continental's district sales managers, including Continental's New Orleans Sales Manager, that lists containing the names of customers notified of a general 10% price increase "should be compiled and should be circularized fully, since this can be made public information."

Agreed

Agreed
in Part

On August 11, 1961, David J. Bloom, a sales manager for Mead at its Atlanta, Georgia, plant, received from Continental's New Orleans sales office such a list. Bloom had not requested the list and believed that it came to him by mistake. [PX-49; PX-50; DX-2; CX-4, pp. 99-101]

Restatement of Paragraph 60

Agreed
in Part

On various dates between July 24, 1961 and August 31, 1961, Continental, Container Corporation, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers and succeeded in increasing prices to some of its customers in varying amounts. Continental had publicly announced its price increase prior to August 11, 1961. On August 24, 1961 Robert Groner, Jr. attended a Fibre Box Association meeting at which one or more of the defendants were present. Groner, who had a duty to gather market information for Continental, reported to his superior that "the feeling at this meeting was that the price increase . . . would probably hold." Groner instructed his district sales managers to make no deviations from Continental's previously announced increase without specific permission. The "feeling" was in error because the price increase did not "hold." [¶ 56 Ex. I PX-1; PX-50; PX-51; DX-67]

Restatement of Paragraph 61

Robert Groner, Jr. and Jehan B. Johnson were the representatives of Continental who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44 above. Prior to the meeting Continental had publicly announced an increase in prices of its corrugated containers in order to absorb the increased cost represented by the rise in the price of linerboard. Since Continental's price increase could not hold if its competitors did not increase their prices, Johnson was interested in knowing what his competitors were doing or had been doing. [CX-5, pp. 393-398] **Agreed**

Restatement of Paragraph 62

When Robert Groner, Jr. attended the meeting described in paragraph 73, he was not an employee of Continental and Continental was not in the corrugated container business. [¶ 3 Ex. I PX-1] **Agreed**

Restatement of Paragraphs 63-64

The representative of Continental present at the meetings described in the second paragraph of Paragraph 16 and in Paragraph 54 was William B. Beams. **Agreed**

Restatement of Paragraph 66

On one occasion when Container Corporation received from Continental the most recent price which Continental had charged to a specific customer, Container Corporation **Agreed**

analyzed Continental's price against Container Corporation's costs, determined that Container Corporation could charge less and still have a comfortable profit, and cut Continental's price. An employee of Continental complained to an employee of Container Corporation but Continental continued giving price information to Container Corporation when such information was requested.

Restatement of Paragraph 70

Agreed In 1962, the said Harold P. Kyle and the said William M. Noftsinger, were the representatives of Miller who attended the meeting in the office of Mitchell, President of Dixie, described in paragraph 44 above. Kyle's purpose in attending the meeting was to learn his competitor's attitude toward passing on to customers the increase in the cost of linerboard. [PX-22, pp. 12-13; PX-25, pp. 21-23]

Restatement of Paragraphs 71-72

Agreed The representative of Miller present at the meetings described in the second paragraph of Finding 16 and in Finding 54 was William M. Noftsinger. [CX-6, pp. 505-506, 510]

Restatement of Paragraph 73

Agreed Early in 1956 corrugated container manufacturers from the Baltimore area solicited business in the Eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the Eastern part of Virginia were then paying for similar corrugated containers. [¶ 67 Ex. I PX-1]

Miller, Dixie, Robert Gair Company prior to its acquisition by Continental, Richmond Container Corporation prior to its acquisition by Albemarle, and possibly West Virginia endeavored to ascertain the localities in Eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. - These matters were discussed by telephone and at a meeting. [¶ 68 Ex. I PX-1]

Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albemarle) each adopted lower nominal board factors for Eastern Virginia than for Western Virginia. [¶ 69 Ex. I PX-1]

Restatement of Paragraph 78

The representatives of Albemarle present at the meeting described in Paragraph 44 were Anthony J. Bagley and M. F. Dozier. [CX-4, pp. 44-45; CX-5, p. 250] **Agreed**

Restatement of Paragraph 79

The representative of Richmond Container (immediately prior to its acquisition by Albemarle on September 9, 1959) present at the meeting described in Finding 54 was M. F. Dozier. [CX-5, pp. 517-518] **Agreed**

Restatement of Paragraph 80

In 1955, there was a meeting at the Plaza Hotel in New York, N. Y., at which representatives of defendant Dixie **Agreed**

and of other non-defendant corrugated container manufacturers were present. Anthony J. Bagley, then President of Richmond Container Company (which was acquired by defendant Albemarle four years later), announced that his Company would increase its prices to American Tobacco Company. After the meeting, Bagley increased his prices to American Tobacco Company but no one else did and Bagley thereafter withdrew his price increase. Bagley testified that for all intents and purposes the people who attended the meeting could have stayed home. [CX-4, pp. 40-43]

Restatement of Paragraph 81

Agreed

The representative of Richmond Container Company, present at the meeting described in Paragraph 73 was Anthony J. Bagley. [CX-4, p. 46]

Restatement of Paragraph 82

Agreed

Anthony J. Bagley met with competitors in the office of Herbert Mitchell, President of Dixie, on at least three occasions and discussed the price level of corrugated containers in the Richmond, Virginia, area. There is no evidence when these meetings occurred nor that any other defendant was present. [CX-4, pp. 39-40]

Restatement of Paragraph 94

**Agreed
in Part**

After a zone meeting of the Fibre Box Association, Roberts stated in the presence of several representatives of other defendants that he was going to increase his prices to Spring Cotton Mills. Roberts said nothing further. Roberts

had not decided to make this announcement prior to making it. No comment was made by any of the others present regarding the announcement. Roberts sought no agreement and stated that he would make no agreement. He expected that the others would not increase their prices. They did not. Inland did and lost the business. Later Inland reduced its prices to get back into the account. [CX-6, pp. 610-613; CX-7, p. 627]

Restatement of Paragraph 98

The representative of Carolina present at the meeting described in the second paragraph of Paragraph 16 was Carter Holbrook. **Agreed**

Restatement of Paragraph 110

In or about 1961 Weyerhaeuser, at the request of Continental, furnished Continental the most recent price that Weyerhaeuser had charged a certain account. After obtaining this information, Continental quoted a more attractive price to this account and took the business from Weyerhaeuser. Weyerhaeuser naturally was unhappy that it no longer had the business. Subsequently, upon inquiry from Weyerhaeuser, Continental confirmed that it had taken the account at a lower price. Weyerhaeuser thereafter attempted to regain the account. [CX-5, pp. 398-410] **Agreed**

PART III**Additional Findings of Fact Conditionally Proposed
by Defendants' Named Therein**

There is no evidence that any employee of St. Regis ever found himself in the presence of a competitor when the subject of prices of corrugated containers in the Southeast United States was mentioned except occasions either before or after the formal part of Fibre Box Association meetings when price information was furnished or requested as described in Finding 70. [CX-5, pp. 220-223] **Agreed**

There is no evidence that any representative of St. Joe was ever in the presence of a representative of any other defendant when the subject of prices of corrugated containers was mentioned. There is no evidence that any representative of St. Joe was ever informed about any meeting where the subject of prices of corrugated containers was mentioned. There is no evidence that any representative of St. Joe requested or furnished price information from and/or to any representative of any other defendant who ever attended any such meeting. **Agreed**

Except for the testimony of one witness who was uncertain, there is no evidence connecting International with any meetings other than Fibre Box Association meetings conducted in the presence of counsel. **Agreed**

MEMORANDUM

**IN SUPPORT OF DEFENDANTS'
PROPOSED FINDINGS OF FACT**

AND

**IN OPPOSITION TO CERTAIN OF PLAINTIFF'S
PROPOSED FINDINGS OF FACT**

Documentary Supplement

This Volume contains reproductions of certain of defendants' exhibits illustrative of the facts relied on by defendants as to certain of Defendants' Proposed Findings of Fact, particularly Findings 22 and 25. In addition to their support for these Findings, they also support many other findings proposed by the defendants. Thus, throughout Volume I of this Memorandum there are references to various of these exhibits, both in the text and in the footnotes.

This selection of illustrative exhibits is intended as a convenience only, and not as a substitute for the entire body of exhibits offered by these defendants.

Format:

In this Volume the exhibits are set forth in exhibit number order. On the left hand page is the data sheet and on the right hand page an offset reprint of the original document.* In any instance where an exhibit contains more than one page, it is continued on the following right hand pages.

Any material in an exhibit which is handwritten or of doubtful legibility has been reproduced in a footnote on the data sheet page for the Court's convenience.

Volume III contains two indices relating to this Volume. Index II-A sets forth the language of Finding 22 and Finding 25 with its various sub-paragraphs, followed by the exhibit number for each of the reproduced documents which support them.

Index II-B lists consecutively the number of each document in the supplement and indicates with an "X" which portions of Findings 22 and 25 the document supports.

* Exceptions are Defendants' Exhibits 155, 206 and 211, which have been printed in their entirety, since offset reprints of the originals were illegible.

DEFENDANTS' EXHIBIT 11

Document No. MEN-9-258

Description of Document:

Salesman's Call Report

Date:

September 7, 1961

Addressed to:

A. S. Clay, Sales Manager,
Winston-Salem Plant,
Container Corporation.

Written by:

George W. Crone, Jr.
Package Engineer,
Winston-Salem Plant,
Container Corporation.

Other Data:

"A 10% red figure" refers to an unfavorable corporate cost figure (based upon the Container Corporation cost estimating manual) for the conversion of container board into shipping containers. This estimated Container Corporation conversion or converting cost figure includes all elements of plant costs which became a part of the finished product except for the cost of materials. The higher the percentage of "red," the larger the amount by which the estimated corporate conversion cost will exceed the amount to be realized at that price and the less desirable the business.

Exhibit Text

Winston-Salem, North Carolina,
September 7, 1961.

Mr. A. S. Clay.

CALL REPORT:

Kimberly Yarn Mills, Inc.,
Mt. Holly, North Carolina.

Roger Young, the manager at Kimberly, told me that he has a contract with Weyerhaeuser that guarantees his price of \$946 per M. or lower until March, 1962. He explained that this or "lower" meant that if someone came by and reduced his price that Weyerhaeuser would meet any lower price and guaranteed they would not increase his prices prior to March, '62.

The box specifications are listed below:

46 1/2 x 20 1/2 x 28 1/4

4" Overlap T&B, Stitched,
3 Panels - 2 Colors

When we work this box back on a 500 lot delivery, it shows a 10% red figure.

George W. Crone, Jr.

GWCjr/pp.

Ref. 8. 11.

MEN - 9 - 258

DEFENDANTS' EXHIBIT 32

Document No. MEN-9-309

Description of Document:

Inter-Office Memo

Date:

December 23, 1960

Addressed to:


D. A. Theobald, General Manager,
Fernandina Plant,
Container Corporation.

Written by:

R. T. Porter, Package Engineer,
Chicago District,
Container Corporation.

Other Data:

"MSF" refers to thousand square feet.

Exhibit Text 

CHICAGO DISTRICT - CODEM

December 23, 1950

D. A. Theobald
BERKMANHIA

RE: Morton Salt Company

In November of this year when there was a reduction in the cost of medium which translated out to about 25¢ per bag, Gaylord went to Morton and made a price reduction on this basis. On November 19, when I had a session with Harry McGill of Morton, I received this information and after telling him of the many increases we had absorbed and I felt that for this reason it was not time to talk cost reduction but that we, nevertheless, could on the market and that he could expect us to be competitive.

On the "Super" 2 1/2/100s. container, the 7.147 feet translated out to a reduction of \$1.00, making the price \$108.20. On the "Regular" 2 1/2/100s. which you priced at \$55.50 the same \$1.00 reduction gave us a price of \$54.50. I meant to price the orders when they came through on this basis, but apparently, your order #406 slipped past me to you.

Mr. McGill just phoned me to call my attention to the difference in billing and says he will put through your Invoice #0712-251 for payment and asks that we issue an adjusting credit.

Price reductions at a time when it is difficult to show profits hurt, I know, but good customer relations are to be maintained, I am sure you agree with me.

R. T. Porter

RTP/s

6/2/51

DEFENDANTS' EXHIBIT 33

Document No. MEN-9-310 (2 pages)

Description of Document:

Inter-Office Memo

Date:

May 5, 1960

Addressed to:

R. N. Alday;
Sales Manager,
Fernandina Plant,
Container Corporation

Written by:

T. E. Freeley,
Package Engineer,
New York,
Container Corporation

Other Data:

Pencilled notation on copy of quotation reads:

"I/13 offered above @ 12% 959.20 for 6M in lots of
1.5M to meet I.P. H&D had less. TEF"

The initials "TEF" refer to T. E. Freeley.

"I.P." refers to International.

"H&D" refers to "Hinde & Dauch" which, in turn,
refers to West Virginia.

Men-9-310

G-310

NEW YORK

May 5, 1960

R. M. Alday
FERMANINA

U.S. RUBBER COMPANY
Gastonia, No. Carolina

Attached is a copy of our quotation of January 6th on Ruby Yarn boxes for subject company's Gastonia, N. C. property. U.S. Rubber has asked us to quote again against an order for 6000 of these containers. The containers would be released in lots of 1500, the first shipment to be made May 26th.

Please note that in January we originally quoted \$1,068 plus \$33 set-up, and on January 13th reduced our price 12% to \$959.20 to meet I.P.

For your ready reference, I am also attaching a copy of our memo of January 14th, which gives you a complete run-down on what happened on the last order. I think we can well expect to have both I.P. and H & D active in this inquiry again.

Please phone or wire prices by Friday, May 6th.

Kindest regards.

TTF/ls


T. E. Frealey

cc-R, B. Bennett, New York

44-2-33

DEFENDANTS' EXHIBIT 33

Continued

Continued Exhibit Text 

CONTAINER CORPORATION OF AMERICA

2000 BROADWAY, NEW YORK 10014
 1000 BROADWAY, NEW YORK 10014

U.S. LUMBER COMPANY

Canton, N.C.

North Carolina

QUOTATION

DATE January 6, 1950

PRICES F.O.B. Fernandina Beach

TERMS 15 10 Days Net 30 after deduction of transportation charges.

ORDER TO BE SHIPPED 15 DAYS AFTER MANUFACTURE

CAN SHIP WITHIN 30 DAYS ON RECEIPT OF ORDER

THIS QUOTATION SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE

ORDERS PLACED AGAINST THE FOLLOWING QUOTATION ARE SUBJECT TO THE CONDITIONS PRINTED ON THE BACK HEREOF

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
3-1/2"	12-1/2 x 20-1/2 x 27-1/2	47.015	162.05
CLAS	100% BY SWEET		
	Painting 10 00		33.00

1/13 Offered above @ - 12% 959.22
 for 4M m/bk to 1.5M
 to net L.P.

Had not been

T.E.C.

CONTAINER CORPORATION OF AMERICA

D. L. FORD
 Sales Service

T. E. Frealey, Packaging Engineer

THIS QUOTATION IS SUBJECT TO CHANGE TO OUR MARKET PRICES AND TO YOUR APPROVAL PRIOR TO TIME OF ORDER

1/13 33.00

DEFENDANTS' EXHIBIT 39

Document No. MEN-9-355

Description of Document:**Salesman's Call Report****Date:****June 9, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation****Written by:****"Smith" refers to Gordon Smith,
Package Engineer,
Fernandina Plant,
Container Corporation****Other Data:****Comments read as follows:**

"Bill called to say that two companies had given \$95 printed prices on 24-21½s. Gaylord has accepted this price. I explained that this is a money losing price which Bill realizes. What do you suggest? I see nothing else to do but accept this price. I would like to get out of 75¢ cwt pick up allowance but again, Gaylord has already agreed to it. Bill will tell me who gave these prices but not over the phone."

Ink notation on left-hand side of report reads:

"6/12/61 O.K. RNA". The initials "RNA" refer to R. N. Alday, Sales Manager, Fernandina Plant, Container Corporation.

"Gaylord" refers to the Gaylord corrugated container division of Crown Zellerbach.

Exhibit Text

* For handwritten text of exhibit, see "Other Data" above.

Rush - W. J. Carlson 95-

100-355

date 6/9/61

Subject: Supplies

A. Company: Besio Products, called on Bill Edwards

B. Precedence on this call: Quotation Sample

Job Work Routine Call Results of Call

Comments and Recommendations: Bill called to see that
two companies had given a printed price on 6/8/61.

Gaylord has accepted this price. I explained
that this is a money loan price which Bill receives.
What do you suggest? I am willing to
to do but accept this price. I would like
to get out of it but pick up all the work. but again,
Gaylord has already agreed to it. Bill will tell
me when you have a price but not over the phone.

C. When do you expect to call again? Schedule Other Monday 6/12

D. What new proposals will you present?

E. Is there anything further that we can do to help you?

Could you let me know what our policy will
be in this matter?

Signed: WJCS

6/9/61

'DEFENDANTS' EXHIBIT 42Document No. **MEN-9-363**

Description of Document:
Letter from Customer

Date:
December 27, 1961

Addressed to:
Container Corporation of America,
Savannah, Ga.,
Attention of Richard M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation

Written by:
A. I. Gross, a purchasing agent for
Atlas Shirt Company, Inc.,
New York, N. Y.

Other Data:

Pencil notation on right-hand side of letter was made by R. M. Cole and reads:

"Pack in LTL Our quote 580.25, 517.95, 422.15, 305.60, 239.84, 152.10".

"LTL" means less than a truckload. The notation "Our quote" and the pencilled numbers represent Container Corporation's last quotation to the customer as contrasted with the prices listed by the customer.

Exhibit Text

* For handwritten note on exhibit, see "Other Data" above.

Tel. Long. area 5-4151



FACTORY - LYONS, GEORGIA

Shirt

COMPANY, INC.

10 WEST 33rd STREET, NEW YORK 1, N. Y.

December 27, 1961

Container Corporation of America
310 Drayton St.
Savannah, Ga.

Att: Richard M. Cole

Dear Mr. Cole:

As per our recent conversation, I am pleased to give you the following quotations on what we are paying for corrugators at the present time f. o. b. factory.

<u>500</u>	<u>1 IN</u>				
2%	35%	#8	Price per thousand	\$536.35	λ
11%	50%	#6	" " "	494.75	X
35%	7%	#4	" " "	360.75	λ
16%	61%	#3	" " "	301.75	λ
13%	28%	#2	" " "	217.40	λ
30%	6%	#1	" " "	131.90	λ

BACK IN ATL

If you can meet these prices, we will be very happy to hear from you.

Very truly yours,

ATLAS SHIRT CO., INC.

E. I. Gross

AIB:yh

af. 4. 42

DEFENDANTS' EXHIBIT 44

Document No. MEN-9-365

Description of Document:

Inter-Office Memo

Date:

July 21, 1961

Addressed to:

Warren L. Cargal,
Assistant Sales Manager,
Fernandina Plant,
Container Corporation

Written by:

Mercer Morrison, Package Engineer,
Fernandina Plant,
Container Corporation

Other Data:

Walter Berg was the production manager of the customer.

Name handwritten on report is "Olin Mathieson," a company engaged in the sale of corrugated containers in the Southeastern United States.

Mr. Alday

Mr. 9-365

ORLANDO CONTAINER

July 21, 1961

Mr. Warren L. Cargal
FERNANDINA

REFERENCE: Salada-Sheriff-Morsey
Shoreline Enterprises Division

Per our telephone conversation Tuesday, and our subsequent quote received Thursday which I gave to customer that day, comparing this quote with our last quote we were exactly \$10.00 less. However, as reported on my Sales Report 7-12-61, customer told me we were \$12.00-\$15.00 higher than competition. A further followup of this account, Walter Berg told me we were exactly \$4.00 higher than ~~cross~~ *Ch* ~~Illinois~~, therefore, the business was placed with them.

Patton
For your information.

Mercer Morrison

MM:rc

Ref. E. 44

DEFENDANTS' EXHIBIT 49

Document No. MEN-9-380

Description of Document:

Letter from customer

Date:

December 20, 1960

Addressed to:

Container Corporation,
Fernandina Plant
Att: Mr. Norman Alday,
Sales Manager,
Fernandina Plant,
Container Corporation.

Written by:

J. H. Long, Assistant Purchasing Agent,
Cannon Mills.

Other Data:

[None.]

CANNON MILLS PURCHASING DEPARTMENT

C. H. DRY
PURCHASING AGENT
 ASST. PURCHASING AGENTS
 R. L. CRUTE
 G. T. DAVIS
 J. H. LONG
 G. A. MILLER, JR.

KANNAPOLIS, NORTH CAROLINA, U. S. A.

December 20, 1960

7-11-61
9-380

Container Corporation of America
 Container Division
 Fernandina Beach, Florida

Att: Mr. Norman Alday

Gentlemen:

There has been a general reduction in the price of our corrugated cartons, effective January 1, 1961. The reduction amounts to approximately 2-1/2%.

We have not had a chance to talk to you in person, or over the phone about this, and we would like for you to let us know immediately if your prices will be competitive.

Yours truly,

CANNON MILLS PURCHASING DEPARTMENT

J. H. Long
n

Long/no


Ap. E. 49

DEFENDANTS' EXHIBIT 50

Document No. MEN-9-381.

Description of Document:

Inter-Office Memo

Date:

March 21, 1961

Addressed to:

R. N. Alday, Sales Manager,
Fernandina Plant,
Container Corporation,

Written by:

T. E. Freeley, Package Engineer,
New York, Container Corporation.

Other Data:

"CCA" refers to Container Corporation.

"H. & D." refers to "Hinde & Dauch" which in turn,
refers to West Virginia.

"Gaylord" refers to the Gaylord corrugated container
division of Crown Zellerbach.

NEW YORK

March 21, 1961

*Handwritten: E. J. ...
P. M. 9-381*

R. N. Alday
FERNANDINA

U.S. RUBBER COMPANY
Gastonia, N. C.

Confirming our wire, Ruby Yarn dies are to be returned to U.S. Rubber Company, Gastonia, N. C., attention: R. Hartsell. For your own information, Carolina Container got the business at \$801.25. Gaylord quoted \$839.00, OEA went as low as \$847.00, H.&D. \$850.00 and Union Bag \$858.00.

U.S. Rubber admits that prices have dropped to ridiculously low levels and doubts that Carolina Container would want repeat business at these prices.

Kindest regards,

TEV/as

Handwritten signature
T. E. Frealey

Handwritten: 4/ El. 50

DEFENDANTS' EXHIBIT 52Document No. **MEN-9-401****Description of Document:****Salesman's Call Report****Date:****October 6, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation.****Written by:****"Dick Cole" refers to R. M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation.****Other Data:*****Comment reads: "If we can get competitive I believe
we will get the next order—Union Bag very low—
Lewis said he would have more info on next call"****Exhibit Text**

* For handwritten note on exhibit, see "Other Data" above.

mon-9-401

Date

10/6/61

Salesman: Dick Cole

A. Company Robbins Packing Co. Called at Lewis HookB. Reasoned on this call: Quotation Sample _____Art Work _____ Routine Call ✓ Results of Call _____Comments and Recommendations If we can get

competitive I believe we will get the
next order - Union Bag very low -
Lewis said he would have more
info on next call

C. When do you expect to call again? Schedule _____ Other ✓D. What new proposals will you present? _____E. Is there anything further that we can do to help you? _____Signed: Cole

df. 52

DEFENDANTS' EXHIBIT 56Document No. **MEN-9413****Description of Document:****Salesman's Call Report****Date:****November 2, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation.****Written by:****R. M. Cole,
Package Engineer,
Fernandina Plant,
Container Corporation.****Other Data:*****Comments read as follows:**

**"Mr. Whitman looked at my quote—
C.C.A. on 30 $\frac{3}{4}$ x 20 x 36 3M \$844.45
Quality on 30 $\frac{3}{4}$ x 20 x 36 3M \$773.
St. Regis on 30 $\frac{3}{4}$ x 20 x 36 3M \$665.
?"**

"Quality" refers to a company engaged in the manufacture and sale of corrugated containers in the Southeastern United States.

"C.C.A." refers to Container Corporation.

Exhibit Text

*** For handwritten portion of exhibit, see "Other Data" above.**

man 9-413

Date 11/2/61Telephone: R. M. COLEA. Company Swainston Spools ^{Wear} Called on Mr. WhitmanB. Represented on this call: Quotation ☒ Sample ☐C. "Work" ☐ Routine Call ☒ Results of Call ☐Comments and Recommendations Mr. Whitman looked at

my quote - C.C.A. on 30 3/4 x 20 x 36 3rd 844.45
 Quality " " " " 3rd 773.
 St. Regis " " " " 3rd 665.

D. When do you expect to call again? Schedule ☒ Other ☐E. What new proposals will you present? ☐F. Is there anything further that we can do to help you? ☐Signed: Cl.

def. Ex. 56

DEFENDANTS' EXHIBIT 57

Document No. MEN-9416

Description of Document:

Inter-Office Memo

Date:

June 27, 1960

Addressed to:

Warren L. Cargal,
Assistant Sales Manager,
Fernandina Plant,
Container Corporation.

Written by:

Gordon Smith,
Package Engineer,
Fernandina Plant,
Container Corporation.

Other Data:

Bill Edwards was Vice President of the customer.

Copies of the memorandum were addressed to R. N. Alday and D. A. Theobald, Sales Manager and General Manager, respectively, of the Fernandina Plant, Container Corporation.

"CCA" refers to Container Corporation.

"Gaylord" refers to the Gaylord corrugated container division of Crown Zellerbach.

COLUMBUS, GEORGIA

June 27, 1960

Ms. 9-416

Mr. Warren L. Cargal
 FERNANDINA

Re: Besco Products Inc., Zebulon, Georgia

Bill Edwards mentioned in conversation today that Inland had offered him a price of \$114.00 on 24-2 1/2's sometime last week. Inland apparently has not been enjoying as much volume as they desired. Bill did not give any business at this price.

From conversation with another canner, Bill had discovered that Inland had offered 24-2 1/2's elsewhere at \$105./M. This in all probability was at Haddock, Ga.

Gaylord as the other supplier this year at Besco has offered to meet any prices he may receive. I feel sure that Gaylord will be asked to meet this \$114./M price. CCA has not committed ourselves to any deal to meet other prices. However, if Gaylord meets this price, I think we would be in an unflattering position as the only supplier at \$121./M.

Please advise me of what our position might be on this matter. I plan to call again on Bill about July 11th.

Our initial order arrived on Saturday and is being unloaded today. They are well pleased with the colors used and print design. We were asked to print an easy open design on the inner flaps of all future orders, which change has been requested this date.

Gordon Smith
 Gordon Smith

cc: Mr. R. N. Alday FLX
 Mr. D. A. Theobald FLX

dy. 4. 57
 time 7/2/60

DEFENDANTS' EXHIBIT 58

Document No. MEN-9418 (2 pages)

Description of Document:

Inter-Office Memo

Date:

November 14, 1961

Addressed to:

**B. N. Alday,
Sales Manager,
Fernandina Plant,
Container Corporation.**

Written by:

**R. B. Ward,
Package Engineer,
Fernandina Plant,
Container Corporation.**

Other Data:

Benny Fenzer was plant manager of the customer.

The column of pencilled prices listed on the copy of the Mead quotation were Container Corporation's prices for the same items in the same quantities as the lower prices in the last column quoted by Mead.

197

GRAND CONTAINER

November 14, 1961

Mr. R. N. Alday
FERNANDINA

REFERENCE: Big Dad Manufacturing Co. - *Cross reference.*

Attached please find a quotation on the subject company's container requirements. Please note that the prices shown on this quotation are approximately 2-3% lower than our price. Benny Fenster, of Big Dad, advised me that I could retain this business if we would meet these prices. Please check and advise me as soon as possible.

R. B. Ward
R. B. Ward


REW:rc

Attachment

dy. 21. 58-1

DEFENDANTS' EXHIBIT 58

Continued

Continued Exhibit Text 

QUOTATION

MEAD CONTAINERS
 2000
 1000

MEAD CONTAINERS

THE MEAD CORPORATION

2000 NEW STREET
 NEW YORK, N.Y. 10001
 PHONE 212 600 0000

TO BIG DAD MFG COMPANY
 STANKE FLORIDA

DATE ORDERED 11-19-61

CALL NEW YORK

FOR THE ATTENTION OF

THE FOLLOWING QUOTATION IS SUBMITTED IN RESPONSE TO YOUR INQUIRY FOR

ITEM NO.	DESCRIPTION	UNIT PRICE	QUANTITY	TOTAL
17 DP	2700 TEST RSC PRINTED 2P 20 STITCHED OUT 15 X 35 X 23 TSF 35 445	837.90 775.90 744.90	250 500 1000	212.10 750.00 719.10
18 SPP	1500 TEST RSC PRINTED 2P 20 STITCHED OUT 24 X 15 X 3 TSF 10 738	270.65 208.65 177.65	250 500 1000	254.25 197.25 157.25
19 DP	2750 TEST RSC PRINTED 2P 20 STITCHED OUT 24 1/2 X 15 1/2 X 21 1/2 TSF 21 842	570.60 508.60 477.60	250 500 1000	528.25 430.25 445.25
20 SS	2500 TEST RSC PRINTED 2P 20 STITCHED OUT 35 1/2 X 24 1/2 X 22 1/2 TSF 41 444	1172.15 1110.15 1079.15	250 500 1000	1102.95 1040.95 1009.95
21 NPP	1750 TEST RSC PRINTED 2P 20 STITCHED OUT 24 X 16 X 7 1/4 TSF 14 049	326.75 264.75 233.75	250 500 1000	309.60 247.60 216.60

1325
 2500

PLANTS LOCATED AT ST. LOUIS, MO.; CHICAGO, ILL.; NEW YORK, N.Y.; PHOENIX, ARIZ.; RICHMOND, VA.

HEAD OFFICE: 2000 NEW STREET, NEW YORK, N.Y. 10001

Delivered out of Jaf

*41.4.58.2**

DEFENDANTS' EXHIBIT 65

Document No. MEN-9-446 (4 pages)

Description of Document:**Salesman's Call Report****Date:****March 9, 1961****Addressed to:****Sales Manager,
Fernandina Plant,
Container Corporation****Written by:****R. Ward,
Package Engineer,
Fernandina Plant,
Container Corporation****Other Data:*****Typed copy of call report is attached.****Handwritten notation at top of the call report reads:
"Ask Si to requote 3-16-61, WLC"****The initials "WLC" refer to W. L. Cargal, Assistant
Sales Manager, Fernandina Plant, Container Corpora-
tion. "Si" refers to "Si" Cobb who was employed in
the sales service office of the Fernandina Plant, Con-
tainer Corporation.****"U/Bag" and "Union" refer to Union-Camp.****Exhibit Text**

* For handwritten text of exhibit, see page 65-3, infra.

Ask Si to Request 3-16-61, info

Mem 9-44/6

X. Ward

3/9/61

Ref. 2.651

L. Butler Apparels

Norm Stephenson

I submitted wardrobe samples to Norm which he liked very much. Norm's brother is the mgr of Apparels Inc. in Wrightsville, Ga and they plan to combine their purchasing thru L. Butler. All purchases will be shipped to L. Butler and their trucks will take containers to Wrightsville. I submitted a quote to Norm on several sizes one of which was an L30 25 1/4 x 15 x 20, 350 * CF taped plain. Our price was

612.40/m for 2M compared to 556.50/m for 2M.

submitted by U/Bay. Union has not submitted a quote on our Wardrobe container, which will be used primarily by the Wrightsville, Ga plant. Norm's thinking is that we will be high on this too. Norm wants to buy from me, but he said he could not afford to if this must price differential exist. I did not see U/Bays quote but I definitely do not believe that Norm would lie about this matter because our relationship has been tops. Since his production is definitely increasing and getting better this

Volume should be #8 to #10m, in year between the two Accts?

Can we be competitive with this situation?

ALB

P.S. His brother in La has used the size shown above and was invoiced at the price of 558.50/m. Our quote to L. Butler Agency is dated 3/1/61 and the 5th item is the one in question at this time.

of 2.65-2

Mem-7-443

Date 3/9/61Salesman: R. WardA. Company L. Butler Apparell, Called on Norm StephensonB. Presented on this call: Quotation _____ Sample ☒

Art work _____ Routine call _____ Results of call,

Comments and recommendations: I submitted wardrobe sample to Norm which he liked very much. Norms, brother is the mgr of Apparellcraft Inc. in Wrightsville, Ga and they plan to combine their purchasing thru L. Butler. All purchases will be shipped to L. Butler and their truck will take containers to Wrightsville. I submitted a quote to Norm on several sizes one of which was an RSC 25 3/4 x 15 x 20, 350 #C/F taped plain. Our price was 612.40/M for 2M compared to 556.50 /M for 2M submitted by U/Bag. Union has not submitted a quote and our wardrobe container, which will be used primarily by the Wrightsville, Ga. plant. Norm's thinking is that we will be high on this too. Norm wants to buy from me, but he said he could not afford to if this much price differential exist. I did not see U/Bags quote but I definitely do not believe that Norm would lie about this matter because our relationship has been tops. Since his production is definitely increasing and getting better, this volume should be \$8 to \$10M per year between the two accts?

Can we be competitive with this situation?


RBW

P.S. His brother in Ga has used the size shown above and

cl. E. 65-3

DEFENDANTS' EXHIBIT 65

Continued

Continued Exhibit Text 

was invoiced at the price of 556.50/M. Our quote to L. Butler Apparell is dated 3/1/61 and the 5th item is the one in question at this time.

Ref. 4. 65-4*

DEFENDANTS' EXHIBIT 67

Document No. MEN-10(A)-3 (2 pages)

Description of Document:

Memorandum of Business Lost

Date:

Fall of 1961

Addressed to:

Unaddressed

Written by:

A. S. Clay,
Sales Manager,
Winston-Salem Plant
Container Corporation

Other Data:

Handwritten notations on bottom of first page were made by A. S. Clay and read:

"add 2/5/62

"Carolina Mills—Maiden approx 65,000 M sq ft./month

"Troutman Shirt—Troutman, Mooresville, Sparta, approx 100 M sq ft./month"

The terms "12.35 plus 25.00 level," "13.00 plus 25.00 level," and "11.70 plus 15.00 level" refer to the area charge or board level equivalent (\$12.35, \$13.00, and \$11.70 respectively) per 1,000 square feet for 200 pound test single wall container board plus a set-up charge (\$25.00, \$25.00, and \$15.00 respectively). The term "12.35 plus 25.00 minus 10% off bottom level" means the area charge or board level equivalent of \$12.35 per 1,000 square feet for 200 pound test single wall container board plus a set-up charge of \$25.00, less 10%.

"Richmond Container" refers to Albemarle.

Exhibit Text

* For handwritten portion of text, see "Other Data" above.

BUSINESS LOST BECAUSE OF SEPTEMBER 1ST PRICE INCREASE

Carolina Mirror, North Wilkesboro, N. C. - Approximately 800,000 square feet per month

Prices were increased to 12.35 plus 25.00 level September 1st. Mead Corporation and Richmond Container continued to sell boxes to this firm at approximately 75% below our level. As a result, we have lost all volume in this account and have shipped no boxes since September.

Piedmont Carton Company, Charlotte, N. C. - Approximately 35,000 square feet per month

We raised prices effective September 1st approximately 10% to a 13.00 plus 25.00 level. Since that time all orders have gone to International Paper Company or Mead Corporation at prices reported to be lower than ours.

Dixie Furniture Company, Lexington, N. C. - Approximately 125,000 square feet per month

We raised prices in this account to the 12.35 plus 25.00 level effective September 1, 1961. The other suppliers - including Carolina Container, Union Bag, and Tri-State Container - are reported by the buyer as continuing to ship at the old prices which are up to 20% below our present prices. As a result, we have lost all volume in this account and have shipped no boxes since September, 1961. The prices in effect before September 1st work back to approximately 25% red.

Washington Mills Company, Winston-Salem, N. C. - Approximately 75,000 square feet per month

Our prices were increased 10% effective September 1st. All of this business is reported to be going to Richmond Container at a level well below our current 12.35 plus 25.00 level.


Forest Furniture Company, North Wilkesboro, N. C. - Approximately 85,000 square feet per month

On September 1, 1961, our prices were raised approximately 10% to the 11.70 plus 15.00 level. Dixie Container guaranteed prices around 10% below our level for the rest of 1961. It is our understanding that the buyer has been notified by Dixie Container of an increase to become effective January 1, 1962.

*Carlin Mills - North Wilkesboro, N.C. - 65,000 sq ft per month
Franklin - Furniture - Winston-Salem, N.C. - 100 sq ft per month
MEN 10/10-3*

DEFENDANTS' EXHIBIT 67

Continued

Continued Exhibit Text 

- Page 2 -

Marshville Box Company, Marshville, N. C. - Approximately 42,000 square feet per month

Prices were increased in this account 10% September 1, 1961. No orders have been received by us since September. We do not know who is shipping boxes to this firm at the present time.

Kimberly Yarn Mills, Charlotte, N. C. - Approximately 25,000 square feet per month

Our prices were increased 10% to a 13.00 plus 25.00 level September 1, 1961. At that time, Weyerhaeuser-Southern guaranteed a price lower than our old price and extended this guarantee until March 1, 1962.

Zarn, Inc., Reidsville, N. C. - Approximately 30,000 square feet per month

Our prices were increased to 12.35 plus 25.00 level September 1, 1961. Subsequent to this, Continental Can Company submitted prices approximately 15% below our level. Apparently the Continental Can prices are from a 'plastic bottle' price list.

Hadley-Peoples Manufacturing Company, Silër City, N. C. - Approximately 30,000 square feet per month

On September 1st, our prices were increased to a 13.00 plus 25.00 level from 12.35 plus 25.00 minus 10% off bottom level. Another supplier (Dixie, we think) guaranteed their prices at the old list for the remainder of 1961, and we have had no business since September 1st.

Copland Converting & Finishing Company, Burlington, N. C. - Approximately 40,000 square feet per month

On September 1st our prices were increased to a 13.00 plus 25.00 level. One of the other suppliers in this account guaranteed prices until the remainder of 1961, and we have received no additional orders.

Celanese Corporation, Rock Hill, S. C. - Approximately 25,000 square feet per month

Our prices were raised approximately 10% September 1st to the 11.70 plus 15.00 level. Other suppliers in this account accepted blanket orders for the remainder of 1961 at the old prices. We have received no business since September 1st.

Total reported in this letter - 1,312,000 square feet per month

ASC/cl

A. S. Clay

44/ E. 67-2
MEN 10(1) 3

DEFENDANTS' EXHIBIT 71

Document No. MEN-10(A)-19

Description of Document:

Letter from customer

Date:

June 21, 1961

Addressed to:

**Container Corporation of America
Fernandina Beach, Florida**

Written by:

**John H. Long, Assistant Purchasing Agent, Cannon
Mills**

Other Data:

[None.]

CANNON MILLS PURCHASING DEPARTMENT

C. H. BRY
PURCHASING AGENT



AGT. PURCHASING AGENTS
R. G. CLUTE
C. T. DAVIS
J. E. LOWE
G. A. WELLS, JR.

KANNAPOLIS, NORTH CAROLINA, U. S. A.

June 21, 1961

Container Corporation of America
Corrugated Container Division
Fernandina Beach, Florida

Gentlemen:

According to the Wall Street Journal of June 16th, there was a reduction of 10% on Kraft Linerboard.

We recently sent you a complete list of our "C" line of cartons, and we would like for you to figure up a new price list on these cartons, basing the prices on the new reduction that was announced.

Yours truly,

CANNON MILLS PURCHASING DEPARTMENT

John H. Long

Long/nc

cf. 71
MEN - 10A - 17

DEFENDANTS' EXHIBIT 72

Document No. RIC-59

Description of document:

Wall St. Journal Clipping and Sales Memo

Date:

November 22, 1955

Addressed to:

A. J. Bagley,
Richmond Container,
General Manager

Written by:

C. E. Stone,
Richmond Container,
Salesman

Other data:

RICHMOND CONTAINER CORPORATION
MEMORANDUM

To Mr. Toni Ragley
From C. B. Stone

Date November 22nd, 1955.

Dear Toni:

I am attaching clipping from the Wall Street Journal, dated November 22nd, 1955.

Looks like the big boys are certainly cutting them loose.

PRICE-CUTTING AN falls on corrugated paper shipping containers.

"The whole thing is senseless," says one manufacturer. "Demand never was better." But two big makers have precipitated the price-cutting in a battle for key markets and customers in the South, heart of the paperboard container manufacturing industry. Price repercussions are felt nationwide.

Corrugated shipping boxes, made from kraft paperboard, represent the biggest single product of the paperboard industry. They're used to ship thousands of products from fruits to TV sets to building materials.

While the container battle rages, paperboard producers defer a price rise on 48-pound board, most widely used in making boxes.

Ref. Ex. 72

DEFENDANTS' EXHIBIT 73

Document No. RIC-63

Description of document:

Two-page Salesman's report

Date:

April 9, 1958

Addressed to:

**Maurice Dozier,
Richmond Container,
Sales Manager**

Written by:

**Edward P. Browder, Jr.,
Richmond Container,
Salesman**

Other data:

RICHMOND CONTAINER CORPORATION
MEMORANDUM

inc 1.3

To DOZIER
From BROWDER

Date 4/9/58

JLB
JLB

I HAD ORIGINALLY PLANNED TO WORK A COUPLE DAYS IN GREENVILLE HOWEVER AFTER TALKING TO SEVERAL OF THE ACCOUNTS AND ALSO BILL RAY, OLD DOMINIONS SALESMAN IN THAT AREA, I BELIEVE I WOULD JUST BE SPINNING MY WHEELS AT THE PRESENT.


GAYLORD, OF COURSE, IS VERY STRONGLY ENTRENCHED AND IS THE PRIME SUPPLIER FOR A GREAT MANY OF THE ACCOUNTS. IN ADDITION, THERE ARE SOME 13 OR 14 CORRUGATED SALESMEN LIVING IN GREENVILLE AND THEY ARE ALL WORKING THE ACCOUNTS HEAVILY, EVERY WEEK OR 2, WHEREAS I WOULD ONLY BE ABLE TO GET DOWN THERE EVERY 6 OR 8 WEEKS OR SO. ALL OF THE MAJOR ACCOUNTS ARE OFF THE MANUAL AND MANY OF THEM ARE ON CONTRACT. PRICE STRUCTURE VERY UNSETTLED AND

OURL →

4.8.73-1

DEFENDANTS' EXHIBIT 73

Continued

Continued Exhibit Text 

OLD COMMISSION, TRYING TO OPERATE ON THE MANUAL, IS
JUST ABOUT OUT OF BUSINESS IN THAT AREA. MEAD IS
PARTICULARLY ACTIVE AND SEEMS TO BE ONE
OF THE BIGGEST PRICE CUTTERS.

ALL IN ALL, I THINK THAT IF WE WERE TO GET ANY
SUBSTANTIAL VOLUME IN THIS AREA IT WOULD BE
NECESSARY TO HAVE A LOCAL MAN WORK THAT AREA.

RECEIVED CONTAINER CORP.

RECEIVED
APR 15 1958

NOT FORWARDED TO THE DIRECTOR

4/24/58

DEFENDANTS' EXHIBIT 74

Document No. RIC-71

Description of document:

Two-page Salesman's report

Date:

May 26, 1956

Addressed to:

A. J. Bagley,
Richmond Container,
General Manager

Written by:

C. E. Stone,
Richmond Container,
Salesman

Other data:

"Jono" refers to Jehan B. Johnson
of Richmond Container's Sales Department

RICHMOND CONTAINER CORPORATION
MEMORANDUM

RIC. 71

To : J. D. Bailey
From : Curtis E. Stone

Date : May 26th, 1956.

Dear Toni:

I have your letter of May 22nd. and replying, agree with you that my business has been very poor this year and there is only one thing that I can contribute this to is our price disadvantage in this section.

If you will refer to the many reports I have sent in, regarding the accounts we use to sell and have lost for no other reason than price, you will agree with me that I have been at big disadvantage in securing business, and I will be frank and state that your co-operation, price-wise, has not been very encouraging.


In this box game that, as you know, I have been in for many years, you have to do some Horse Trading, so to speak and your prices have to be flexible, give a little here and there and take more profit where we can get it. Set prices, take it or leave it, is not very conducive in securing box business.

Referring further to our present price structure, there are numerous accounts that we have lost on price and nothing else. Competitors prices to some of these accounts, were lower than we could possibly take the business without losing money and I appreciate this fact. however, it takes the business away from us, which fact we cannot deny.

A listing on next page the numerous accounts we have lost on price and price alone.

DEFENDANTS' EXHIBIT 74

Continued

Continued Exhibit Text 

RICHMOND CONTAINER CORPORATION

MEMORANDUM

Sheet # 2.

To Mr. A. J. Bagley

Date 5/26/56

From

Aerotron Corp.	
Cannon Mills	
Commonwealth Hosiery Mills	Buying at same price they did last year
Sant Hill Furniture Corp.	
Spry Cotton Mills	
Pennell Knitting	
Sanville Knitting Mills	Last two orders quoted on.
Blue Gem Manufacturing Co.	
Cooland Converting & Finishing	Lost last order they placed. Information attaches.
Vick Chemical Co.	

There are other accounts that we could have gotten business from had our prices been in line.

I called on Core Mills this week and Ed. Chambers told me that none of their suppliers had advanced their price and had stopped talking about advances. He said that they are paying the same prices they paid last year. There has been no increases in prices.

If you have read the many reports I have sent to Jeno, and I know you have, you must fully understand our situation and why we are not getting much business.

I don't want you to interpret this letter as an excuse for not getting business on my part, as this information I am giving you is a FACT.

11/14/56 474-23

DEFENDANTS' EXHIBIT 86

Document No. CAR-142

Description of document:**Memo****Date:****July 20, 1961****Addressed to:****Ed T. (Ed B. Totty), Sales Representative for Carolina Container Company.****Written by:****Carter (Carter T. Holbrook), Sales Manager for Carolina Container Company.****Other data:****"He placed order" means purchasing agent of Long Manufacturing Company (subject of memo) placed order.**

CAR. - 142

7/20/61

To: Ed T.

Re: Long Mfg. Co., Petersburg, Va.

Thank you very much for forwarding to us the competition prices on the above order. I actually see no rhyme or reason for the prices which were submitted. The difference between the 5000 and 10,000 lots indicated that everyone used a different set up and he placed the order with Richmond at about 19% below our prices.

We appreciate your getting this info for us and we hope that we'll be in position to make a bid when the customer is next in the market.

CARTER
ethics

dy. Ex. 86

DEFENDANTS' EXHIBIT 87

Document No. CAR-157

Description of document:

Purchase Order

Date:

July 25, 1961

Addressed to:

Carolina Container Company

Written by:

Metal Fabricators, Inc. of Charlotte, North Carolina,
Mr. Hugh S. Barnes

Other data:

Note, "These prices are competitor's—if you do not want to accept at these prices please return or advise." HSB means as stated if Carolina Container Company does not wish to accept this order at prices shown they are to advise Mr. Barnes.

—7% means prices Mr. Barnes shows on Metal Fabricators' order are 7% below prices Carolina Container Company had been charging.

50 $\frac{3}{4}$ means width of the sheet to be run off corrugator in preparation of this order and was written by Carolina Container Company production clerk.

16/16 means this size is produced from 200 pound single wall container board made from liners caliper-ing .016/.016. 69 $\frac{3}{4}$ and 16/16 means the same thing.

10-26 means date the order was delivered and was written by Carolina Container invoice clerk. 9-20 means the same thing.

1700 and 1000 mean lineal footage of container board required to produce this order. This was written by Carolina Container Company estimator.

3700-01 means Carolina Container Company's factory production order numbers. Written by Carolina Container Company order clerk.

7-27 means date order was acknowledged by Carolina Container Company acknowledgment clerk.

CAR.-157

PURCHASE ORDER

METAL FABRICATORS, INC.

2923 S. GRIFFITH ST. P. O. BOX 3232 PHONE EDison 4-9020
CHARLOTTE 3, NORTH CAROLINA

No 646

TO Carolina Container Company
Box 1191,
High Point, N. C.

DATE July 25, 1961

SHIP TO Us

VIA Best way



NOTICE: PACKING SLIP SHOWING CONTENTS OF EACH PACKAGE MUST ACCOMPANY SHIPMENT

50 3/4 16 1/4 10-26 200 ea. 9-E 22 1/2 x 22 1/2 x 27 1/2 R.S.C. 200# Test printing -1P20
at \$1 \$567.95/M
69 3/4 16 1/4 9-20 300 ea. 7 & 8" pipe 9 x 9 x 50 R.S.C. 200# Test printing -1P20
at \$381.45/M

NOTE: HOLD FOR RELEASE

Note: These prices are competitive.
if you do not want to accept
it these prices please return
in advise
HOB

3700-01

7-27

JUL 26 87

Acknowledge receipt and acceptance of this order promptly.
We reserve the right to cancel order if terms and shipments
are not made as agreed.

METAL FABRICATORS, INC.

DEFENDANTS' EXHIBIT 93

Document No. CAR-187

Description of document:

Price Comparison

Date:

January 21, 1961

Addressed to:

Written by:

Fred Woodson, Carolina Container Company's sales representative copied this from a quotation of Miller Container Corporation dated January 29, 1960. James Largen, purchasing agent of Paul Knitting Company, gave the Miller Container Corporation's quote to Mr. Woodson to copy. All comments are made by Fred Woodson.

Other data:*

"Miller" means Miller Container Corporation of Roanoke, Virginia.

Exhibit Text

* Handwritten text of note on exhibit is as follows:

"Copy of 11-29-60 Miller quotation for 500 lots. Buyer had a list which compared our 500 lot prices & Mil. & it seems that Mil. had us beat on price & is scheduled to get 100% of the business. There is a chance that the buyer can talk his boss into splitting the business with us if we send him revised prices. Buyer actually likes our quality better, and I believe could get his boss to change before its too late."

Paul K. Ty Miller
Paul K. Ty Miller
CAR. 187

DATE 7-12-61

2/24/93

LINE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL
500 LOTS (2nd piece)																
SB	\$ 85.90		RSC	150 #	2" x 1/2"		Plain									
B	106.85		2" OL													
B	159.70		2" OL	175 #												
B	145.90		2" OL	175 #												
8B	145.70		2" OL	175 #												
10B	161.30		2" OL	175 #												
W	200.85		2" OL	175 #												
L	222.15		2" OL	175 #												
B	190.05		2" OL	175 #												
L	297.65		2" OL	200 #												
B	271.30		2" OL	200 #												
B	491.55		2" OL	275 #	3" x 1/2"											
OM	614.10		2" OL	275 #	3" x 1/2"											
OL	692.85		2" OL	275 #	3" x 1/2"											
OM	946.85		RSC	275 #	3" x 1/2"											

if possible
Please
note on
these spec
only.

Copy of 11-29-60 Miller quotation for
500 lots.

Buyer had a test which compared our 500 lot price
+ mill. & it seems that mill had us beat on
price & is scheduled to get 100% of the
business. There is a chance that the buyer can
talk his boss into splitting the business, unless
we if we send him revised prices. Buyer
actually likes our quality better & I believe could
get it less to change above its too late.

DEFENDANTS' EXHIBIT 95

Document No. CAR-269

Description of document:

Letter

Date:

May 27, 1961

Addressed to:

Carolina Container Company of High Point, North Carolina, Arnold J. Koonce, Jr., Sales Representative for Carolina Container Company.

Written by:

Waverly Mills, Laurinburg, North Carolina, George Everington, Assistant Secretary.

[Other data:]

None.]

Exhibit Text*** Body of text of Exhibit is as follows:**

"Dear Arnold:

"With further reference to our discussion relative to carton prices, I believe I told you that Carolina was about 3½% off the lowest quotation given us out of the eight suppliers we requested quotations from.

"In checking a little closer after you left, I inadvertently gave you the wrong figure. Carolina is more nearly 7½% higher than our lowest quotation. This quotation is from a supplier that we normally buy from and not one simply making a price to buy himself in.

"I am sorry I gave you the wrong figure and will talk to you about it on your next trip".

CAR.-269

WAVERLY MILLS, INCORPORATED

MANUFACTURERS OF

Premium Yarns
Cottons - Rayons and Blends
 LAURINBURG, N. C.

May 27, 1961

Carolina Container Company
 High Point
 North Carolina

Attention: Mr. Arnold J. Koonce, Jr.

Dear Arnold:

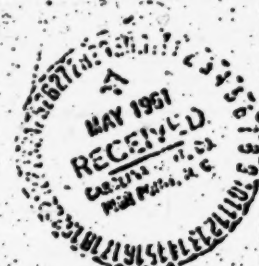
With further reference to our discussion relative to carton prices, I believe I told you that Carolina was about $3\frac{1}{2}\%$ off the lowest quotation given us out of the eight suppliers we requested quotations from.

In checking a little closer after you left, I inadvertently gave you the wrong figure. Carolina is more nearly $7\frac{1}{2}\%$ higher than our lowest quotation. This quotation is from a supplier that we normally buy from and not one simply making a price to buy himself in.

I am sorry I gave you the wrong figure and will talk to you about it on your next trip.

Very truly yours,

cm/sfc



47 4-95

DEFENDANTS' EXHIBIT 98

Document No. CAR-287

Description of documents:

Letter

Date:

July 15, 1960

Addressed to:

Carolina Container Company, High Point, North Carolina.

Written by:

Erwin Mills, Inc., Durham, North Carolina, J. T. Holt, purchasing agent.

Other data:

Pencil note written by Carter Holbrook, Carolina Container Company Sales Manager.

Note, "Jack Holt Advised 7/25/60" means Carter Holbrook advised Jack Holt of Erwin Mills that Carolina Container Company would agree to sell at prices Mr. Holt mentions in the letter.

"Cards" was written by Carter Holbrook and is instructions to secretary to bring Erwin Mills's price cards to his office.

"Less 10%" is a pencil note of 10% mentioned in Mr. Holt's letter.

CAR.-287-



ERWIN MILLS, INC.

FOUNDED 1904

DURHAM, NORTH CAROLINA

July 15, 1960

Carolina Container Company
High Point, N. C.

Gentlemen:

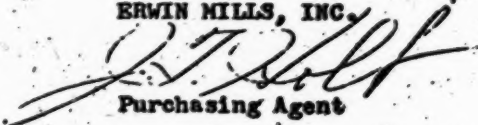
I am being offered cartons, similar to the ones for Erwin, N. C., on the basis of 12.35 less 10% on 200 lb. test board. I believe this figure is out at approximately 16.60 less 10% on 275 lb. test board.

Please let me know whether or not your company would be willing to go along with the same offer. Since this offer is made on the cartons at Erwin, I am asking the other suppliers the same question and my reason for this action is that I feel you should be given an opportunity to meet competition.

Kindest regards.

Yours very truly,

ERWIN MILLS, INC.


Purchasing Agent

JTH/mls

Jack Holt
advised
7/25/60

Less 10%

of El. 98

DEFENDANTS' EXHIBIT 100

Document No. CAR-290

Description of document:

Letter

Date:

July 26, 1960

Addressed to:

Carolina Container Company, High Point, North
Carolina, Arnold Koonce, Sales Representative.

Written by:

Hamer Spinning Mills, Hamer, South Carolina,
Jerry Madans.

[Other data:

None.]

CAR.-290

THE HAMER SPINNING MILLS
DIVISION OF MACANAL TEXTILE CORPORATION
HAMER, S. C.

July 26, 1960



Carolina Container Company
High Point, N. C.

Att: Mr. Arnold Koonce

Dear Arnold:

We refer to the sample that you made for us about July 12th that was shipped to Hamer Spinning Mills. The size of the sample was as follows:

Length 52" Width 19½" Depth 26½"
4" Overlap
350 Test 90/90 @ 1224.35 Per M

We would like another sample made with the overlap changed from 4" to 5" and the test from 90/90 to 90/69. The carton should weigh approximately 11 lbs. 4 oz, so we may adjust our tare accordingly.

One of your competitors submitted a sample carton that we are planning to use at Macanal with the above specifications, and the price is approximately \$90.00 per thousand less than yours. We trust your quotation will be competitive.

Very truly yours,

THE HAMER SPINNING MILLS

Jerry Madana
Jerry Madana

JH/rb

Ref. E. 100

DEFENDANTS' EXHIBIT 101**Document No. CAR-294****Description of document:****Letter****Date:****September 2, 1960****Addressed to:****Hank Abernethy, Sales Representative for Carolina
Container Company, High Point, North Carolina****Written by:****The Hadley Corporation, Weaverville, North Carolina,
Don Roberts, purchasing agent**

CAR.-1294

Hadley

THE HADLEY CORPORATION

WEAVERVILLE, NORTH CAROLINA

September 2, 1960



Hank Abernethy
Carolina Container Corp.
High Point, N. C.

Dear Mr. Abernethy:

Re your invoice #07005 concerning the S-2 cartons which the price of is \$667.95 per thousand. The Union Bag Camp Paper Corporation price of the same carton is \$627.95 per thousand.

Please be advised that this is one of the things that we talked about in our conversation of September 1.

Please advise.

Sincerely,

THE HADLEY CORPORATION

Don Roberts

Don Roberts

DR/er

Ref. E.L. 101

DEFENDANTS' EXHIBIT 105

Document No. CAR-365

Description of document:

Letter

Date:

June 24, 1958

Addressed to:

Carolina Container Company, High Point, North
Carolina

Written by:

Erwin Mills, Inc., Durham, North Carolina, J. T.
Holt, purchasing agent.

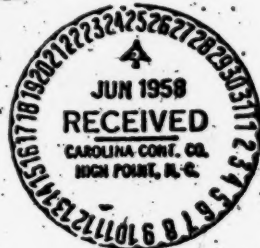
CAR.- 365

ERWIN MILLS, INC.

FOUNDED 1898

DURHAM, NORTH CAROLINA

June 24th, 1958

A. T. HOLY
PURCHASING AGENT

Carolina Container Company
High Point, N. C.

Gentlemen:

You are doubtless aware of the fluctuations in the prices on cartons. Quite frankly, we are offered prices that are considerably under the ones we are presently paying you, but thought it best to give you an opportunity to meet competition.

Suggest you revise your prices covering cartons you are presently delivering to Erwin and let us have best price you are able to offer us at this time.

Yours very truly,

ERWIN MILLS, INC.

Purchasing Agent

JTH/mls

Jy 24 1958

DEFENDANTS' EXHIBIT 113

Document No. CAR-426

Description of document:

Salesman's Report

Date:

February 7, 1962

Addressed to:

Carolina Container Company, High Point, North
Carolina.

Written by:

Fred Woodson, Sales Representative, Carolina Con-
tainer Company.

Other data:

"Wey" means Weyerhaeuser Company.

"Rich" means Richmond Container Company, now
known as Albemarle Paper Manufacturing Company."HC" means Highland Container Company, now
known as Union Bag-Camp Paper Corporation.

FIRM Appomattox Garment Cp. DATE 2-7-62

LOCATION Appomattox BUYER Jim Cobb

REMARKS

Buyer said out of 10 co's only 1 co. was higher than we were
& the rest were lower. Most of them were only \$3. or \$4. lower
than our prices, but the 3 lowest co's were Rich-Wey-HC. One of
these was about \$39.04 lower and another was about \$31.62 lower
than our prices on the #362 carton.

OUR LAST ORDER.	BUYING FROM	Wey.	SALESMAN MAKING CALL	Fred
--------------------	----------------	------	-------------------------	------

Ch/EL 113

DEFENDANTS' EXHIBIT 114

Document No. CAR-431

Description of document:

Salesman's report

Date:

February 16, 1962

Addressed to:

Carolina Container Company, High Point, North Carolina.

Written by:

Fred Woodson, Sales Representative, Carolina Container Company.

Other data:

"Rich" means Richmond Container Company, now known as Albemarle Paper Manufacturing Company.

"TS" means Tri State Container Corporation.

"FB" means Fibreboard Container Company, now known as Continental Can Company.

"H&D" means Hinde & Dauche Division of West Virginia Pulp and Paper Company.

Exhibit Text

FIRM Danville Ktg. Mills DATE 2-16-62

LOCATION Danville BUYER Moss

REMARKS

Buyer said \$660.00 was the lowest price on their H ctns. &
we were next the lowest. The highest price was about \$860.00.

OUR
LAST ORDERBUYING
FROM

Rich-TS-FB-H&D

SALESMAN
MAKING CALL

Fred

Def. 2. 114

DEFENDANTS' EXHIBIT 122

Document No. CAR-1305

Description of document:

Bid No. 62072

Date:

January 18, 1962

Addressed to:

Written by:

State of North Carolina,
Purchase and Contract Division,
Raleigh, North Carolina.

Other data:

This list of bids for State contract was prepared by the State of North Carolina, Purchase and Contract Division, Raleigh, North Carolina and made available to anyone wanting a copy.

None of the notes shown were written by any of Carolina Container Company employees, but is exactly as prepared by the State.

"Error Confirmed by Phone 1-18-62 by Mr. Holt" was a part of this document when furnished by the State Purchase & Contract Division to Carolina Container Company.

CAR. - 1305

ITEM 1	ITEM 2	ITEM 3	ITEM 4	ITEM 5	ITEM 6	ITEM 7	TERMS	DELIVERY
1286	129.05	338.40	361.35	10			10/10	10 11/14/2
112.80	120.15						NET	20
161.70	166.15						10/10	10
139.00	138.55						10/10	10
166.50	133.10						10/10	21
131.25	169.30						NET	7-10
141.00	146.60						10/10	15
146.55	168.70						NET	
125.00	112.10							
121.80								
2.88	2.88							
1.18-61								
1.18-61								

164 72 122

DEFENDANTS' EXHIBIT 127

U. S. v. Container Corporation et al.
Document No. CAR-1316

Description of document:

Bid #61091

Date:

January 27, 1962

Addressed to: [None]

Written by:

State of North Carolina, Purchase and Contract Division, Raleigh, North Carolina.

Other data:

This list of bids was prepared by the State of North Carolina, Purchase and Contract Division, and made available to anyone wanting a copy.

None of the notes on this document were written by an employee of Carolina Container Company.

DEFENDANTS' EXHIBIT 135

Document No. CCC-2861-62

Description of document:**Monthly Activities & Progress Report****Date:****February 21, 1961****Addressed to:****Robert Groner, Jr.,
General Manager,
Southern District,
Corrugated Container Division,
Continental Can Company****Written by:****William B. Beams,
District Sales Manager,
Martinsville, Va. plant
Corrugated Container Division,
Continental Can Company****Other data:****Copies to W. Duane Arbuthnot,
Manager of Sales,
Corrugated Container Division,
Continental Can Company;****Don G. Thomas,
Sales Manager—National Accounts,
Corrugated Container Division,
Continental Can Company;****Richard W. Everett,
Assistant Manager, Sales Control Department,
Continental Can Company****Exhibit Text**

Robert Groner, Jr.
524 Richmond

W. B. Beams
613 Martinsville
February 21, 1961

Monthly Activities & Progress Report - 613 Martinsville
JANUARY 1961

1. Gross Sales to Trade

<u>1960</u>		<u>1961</u>	
<u>Budget</u>	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>
293.0	278.0	295.0	284.8
94.9%			

Gross Return Per Ton (Trade)

<u>1960</u>		<u>1961</u>	
<u>Shipped</u>	<u>Return</u>	<u>Shipped</u>	<u>Return</u>
1175	236.63	1207	235.77

Gross Return Per H Sq. Ft. (Trade)

<u>1960</u>		<u>1961</u>	
<u>Shipped</u>	<u>Return</u>	<u>Shipped</u>	<u>Return</u>
15,237	18.25	15,175	18.77
av. wt. basis 162#		av. wt. basis 159.2#	

2. New Business

One new account in January. This was Zarn, Inc. of Reidsville, N.C. This is a plastic bottle manufacturing company, a new business, and our initial order was \$585.50. We hope to get 100% of this and as they grow, so will our sales.

3. Competition

We have had modification of several of our customers who have been offered reduced prices since January 1, 1961. In all cases we have so far maintained or gained position in these accounts by downward price adjustments.

Examples:

Pulaski Vencer & Furniture - cut by Dixie - we adjusted and have been promised 90% of Pulaski business and 100% of Martinsville business. This should give us \$30,000 plus additional business in 1961.

American Thread, Sevier, N.C. - cut by Inland 5-1/2%. They received no business. We maintained our 25% position by meeting price. I presume Tri-State and Union did likewise.

Mt. Hope Finishing Co. Mt. Hope, N.C. - prices were cut by Carolina 10%. We were placed in bad position by this and had to go 12-1/2% to maintain our position. Indications are that we will gain.

Ref. Ex. 135-1

DEFENDANTS' EXHIBIT 135

Continued

Continued Exhibit Text 135

Robert Groner, Jr.

W. B. Beams

February 21, 1961

Progress Report - January 1961 cont'd

Other reductions in sizable accounts have been reported as of 2-20-61 and are being negotiated or investigated. Will report final action on February report.

4. Business Gained or Lost

- (a) Bassett Sales - January - \$57,192.
- (b) Gain \$30,000 annually Pulaski Veneer & Furniture
- (c) Gain \$20,000 annually Burlington Industries (re-entry)

5. Forecast for February

In spite of several North Carolina accounts, particularly furniture, working 50% to 75% of capacity our back-log is sizable and better than average. We should meet plant sales budget in February.

6. Major Prospects

- (a) New - Housatonic Container - sheet plant at Newton, N.C., within a few months. We have contacts locally and in Connecticut.
- (b) Old - Have not yet had time to appraise accounts presented by salesmen for planned concentration. Have sizable lists from all.

7. Miscellaneous

Rumors continue to grow stronger that I.P. will build a plant in Statesville, N.C. soon.

Housatonic will build a sheet plant in Newton, N.C.

Further price cutting imminent if volume does not improve in area at once.

W. B. Beams

WBB:rw

cc:

W. D. Arbuthnot 39

D. G. Thomas 641

R. W. Everett 43

File

147 135 52

DEFENDANTS' EXHIBIT 136**Document No. CCC-2867-68****Description of document:****Monthly Activities & Progress Report****Date:****March 28, 1961****Addressed to:****Robert Groner, Jr.,
General Manager, Southern District,
Corrugated Container Division,
Continental Can Company****Written by:****William B. Beams,
District Sales Manager,
Martinsville, Va. plant
Corrugated Container Division,
Continental Can Company****Other data:****Copies to W. Duane Arbuthnot,
Manager of Sales,
Corrugated Container Division,
Continental Can Company;****Don G. Thomas,
Sales Manager—National Accounts,
Corrugated Container Division,
Continental Can Company;****Richard W. Everett,
Assistant Manager,
Sales Control Department,
Continental Can Company**

CONTINENTAL CAN COMPANY, INC.



INTERNAL CORRESPONDENCE

CCC-2867

TO:	Robert Groner, Jr.	FROM:	W. E. Beams
LOCATION:	524 Richmond	LOCATION:	613 Martinsville
ATTENTION:		DATE:	March 28, 1961

SUBJECT: Monthly Activities & Progress Report - 613 Martinsville
FEBRUARY 1961

REFER TO:

1. Gross Sales to Trade

1960		1961	
Budget	Actual	Budget	Actual
292,000	286,000	290,000	320,437
98.0%		110.5%	

Gross Return Per Ton (Trade)

1960		1961	
Shipped	Return	Shipped	Return
1204	237.79	1345	237.88

Gross Return Per M Sq. Ft. (Trade)

1960		1961	
Shipped	Return	Shipped	Return
15,138	18.91	16,835	19.02
Av. Wt. Basis 159.1#		Av. Wt. Basis 159.7#	

2. New Business

Three new accounts in February - two of which have good volume potential

Account	Location	Initial Order
A. J. Schnelerson	Siler City, N.C.	\$ 524.95
Roanoke Chemical Co.	Salem, Va.	235.00
Morton Mfg. Co.	Lynchburg, Va.	\$4921.50

The Morton Mfg. Company account was at one time our account 100%. We believe that our quality and service will move out the Baltimore competition and should develop into \$25,000 or more annually.


3. Competition

The price trend continues downward in practically wholesale quantities of accounts. The competition reduces prices from 5% to 15% anywhere volume is available. There is no pattern and the reductions are too numerous to be specific. The worst offenders as to size and number of reductions are Moyerhauser, Union Bag and Inland of the integrated companies and Richmond and Dixie of the independents.

WJ & 136-1

DEFENDANTS' EXHIBIT 136

-Continued

Continued Exhibit Text 

CONTINENTAL CAN COMPANY, INC.

INTERNAL CORRESPONDENCE

TO: Robert Groner, Jr.
524 Richmond

FROM: V. B. Seams
LOCATION: 613 Martinsville

ATTENTION:

DATE: March 28, 1961

SUBJECT: Monthly Activities & Progress Report cont'd.

REFER TO:

4. Business Gained or Lost

- (a) Bassett Sales in February \$53,912.90.
- (b) No volume losses - some gross sales losses.
- (c) Sizable gain - Morton Mfg. Company (new account).

5. Forecast for March

Back log better than average. Our Plant Sales Budget \$320,000 and we expect to ship \$350,000 to \$360,000.

6. Major Prospects

- (a) Mid-State Tile Company, Lexington, N.C. has indicated much interest in our Conlite. Now using SnoBrite and apple white. We expect entries and good volume momentarily.
- (b) Expect to develop alce business in western North Carolina with A. H. Turner, Jr. Current good volume prospects are: Blowing Rock Furniture, Kent-Coffey, American Furniture Company.

7. We are pushing our new Conlite concertedely and expect fine results.

Price trend continues downward and may set new lows in the not too distant future, with more competitive plants planned in area and no major new volume in sig. d many textile and furniture plants working short time.

V. B. Seams
V. B. Seams

WBB:rw

cc:

W. B. Arbuthnot 39

D. G. Thomas 641

R. W. Everette 43

File

DEFENDANTS' EXHIBIT 137

Document No. CCC-2869-72

Description of document:

Monthly Progress Report

Date:

April 7, 1961

Addressed to:

Robert Groner, Jr.,
General Manager, Southern District,
Corrugated Container Division,
Continental Can Company

Written by:

Roy N. Taylor,
Acting District Sales Manager,
Atlanta, Ga. plant,
Corrugated Container Division,
Continental Can Company

Other data:

Copies to Clovis C. Viguerie, Assistant to General
Manager, Southern District, Corrugated Container
Division, Continental Can Company;

Richard W. Everett, Assistant Manager, Sales Control
Department, Continental Can Company;

W. Duane Arbuthnot, Manager of Sales, Corrugated
Container Division, Continental Can Company;

James I. Donohue, Special Sales Representative—
National Accounts, Corrugated Container Division,
Continental Can Company;

Don G. Thomas, Sales Manager—National Accounts,
Corrugated Container Division, Continental Can
Company;

John Anouilh, Jr., Plant Manager, Atlanta, Ga. plant,
Corrugated Container Division, Continental Can
Company.

The predecessor of William B. Beams referred to in
the Report was Benjamin F. Beeler.

C. W. Cooper, Jr., referred to in the Report was,
prior to February 1, 1961, a salesman, Atlanta, Ga.
plant, Corrugated Container Division, Continental
Can Company.

Earl Goodrich and Ted Pisarczuk referred to in the
Report were respectively Product Sales Manager and
New Product Development and Packaging Design
Engineer, Corrugated Container Division, Conti-
nental Can Company.

524 Richmond
H. Groner, Jr.

611 Atlanta
April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

1. Sales Figures - Performance against Budget -

	<u>1961</u>		<u>1960</u>	
	<u>Trade</u>	<u>Interplant</u>	<u>Trade</u>	<u>Interplant</u>
Actual	\$181,016.00	\$15,264.00	\$188,352.00	\$10,157.00
Budget	210,000.00	15,000.00		

We missed budget in March by 12.8%.

2. Performance against Quota -

	<u>SALESMEN</u>	<u>MARCH</u>	<u>HOUSE</u>
Actual	\$139,066.00		\$44,885.00
Quota	142,916.00		38,750.00
% Quota	97.3%		115.8%

	<u>SALESMEN</u>	<u>YEAR TO DATE</u>	<u>HOUSE</u>
Actual	\$433,587.00		\$87,108.00
Quota	428,748.00		116,230.00
% Quota	101.1%		74.9%

3. New Business -

The following new accounts were acquired in March, 1961:

OLIN-WATHLIESON CHEMICAL CORPORATION - East Point, Georgia

The first order of corrugated DDT Containers was placed here during the month. A trial shipment will be made during April to see if performance is satisfactory on these boxes.

The initial order amounted to some \$5,000.00.

147-137-1

C.C. - 2.8.70

R. Croner, Jr.

-2-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

KNOX GLASS COMPANY, INC. - Forest Park, Georgia

Our first shipments to Knox were made during the month of March.

The dollar volume for March, to this account, was \$19,752.00, and the square footage shipped was 1,614,970.

E-Z-CO-CAR CORPORATION - BRANCH OF TUCKER - Augusta, Georgia

We shipped our first order to this account, after being out as a supplier for two years.

ACCURATE PRINTERS - Atlanta, Georgia

FOUNTAIN ENGINEERS, INC. - Atlanta, Georgia

4. BUSINESS LOST DUE TO COMPETITIVE ACTION:

U. S. Rubber Company - Atlanta, Ga., Loganville, Ga. and Miami, Florida

The dollar volume for 1960 was \$11,500.00.

This business is put out on a bid basis each quarter. As of now, I am not sure which company took our portion of the business due to a lower quoted price, but I will find out shortly. We have hopes that we will regain our position next quarter.

Spencer Adams Paint Company - Atlanta, Georgia

We have lost our position here for six months, after having this account 100% for five years. Gaylord reduced our prices and will have the business during the next six months period. We hope to re-enter this picture at the end of six months.

Peter Pan Baking Company - Atlanta, Georgia

This business was lost for at least a six month period due to competitive action by Mead-Atlanta Paper.

Volume will run around \$20,000.00 per year and, here again, we hope to regain our position at the end of six months.

47 24.1372

CCC - 2871

R. Croner, Jr.

-3-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

5. Competition -

I feel that it can be seen from the above accounts lost that the market is extremely soft and it would appear that most of our competitors are seeking volume at all costs.

We are attempting to stay as close to our accounts as possible, in order to head off or meet price concessions which are being offered rather freely at this time.

We have high hopes that business will increase during the coming months and that there will be some firming of prices in this market.

All textile business which is being placed on a bid basis in this area is going at an extremely low level, with most corrugated users in this field attempting to get commitments of six months or more at the ridiculous prices being offered.

I feel that it should be pointed out here that my predecessor is now selling for St. Joe Paper Company, Port St. Joe, Florida, and he is based here in Atlanta.

Also, C. W. Cooper, who is no longer with our company as of February 1, 1961, is with a local sheet plant, Martin & Laufer.

As yet, we have felt no effects from the above run, as far as our customers go, other than Cooper's close relationship with Murray Biscuit Company.

6. Major Prospects -

W. L. Jackson Manufacturing Company, Chattanooga, Tennessee

Karl Goodrich and Ted Ficarelli are making a concerted effort to get this project wrapped up and to get a workable sample in this account.

It is my feeling that this experimental work here has progressed entirely too slow and that we will have to get behind this with all possible speed, if we are to attain any success in this account.

Calanese Corporation - Rome, Georgia


This is a large Caylor account and we appear to be making headway here toward getting our first order.

The volume in this account runs around \$100,000.00 per year.

WJ EL 137-3

DEFENDANTS' EXHIBIT 137

Continued

Continued Exhibit Text 

CCC-2872

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R. Groner, Jr.

-4-

April 7, 1961

MONTHLY PROGRESS REPORT - March, 1961

Crystal Springs Bleachery - Chickamauga, Georgia

We lost our portion of this business six months back due to competitive action and it appears we may be able to gain our position here within the next month.

Ercmann Doll Company - Columbia, South Carolina

This account is presently buying from northern suppliers and we feel that we may be able to get some portion of this business when they start purchasing locally.

Olin-Mathieson Chemical Corporation - East Point, Georgia

While we received our first trial order here, we feel that with a successful shipment overseas that this could possibly be a very good volume account for us. We will follow the results of the trial shipment very closely.

7. Forecast for April, 1961 -

Late March orders seem to indicate that there may be some pick up in business activity here in April.

As of now, I feel that our performance here in Atlanta will improve against both budget and quota.

There are still many soft spots in the economy of this area, but many accounts have allowed their inventories to be depleted and, with any small increase in business activity, I believe that we will feel immediately the results of this by way of increased business.

8. Quality Complaints -

Overall, quality complaints again ran very low in March. There were two minor complaints on printing, neither of which were serious.

There was also one minor complaint on the performance of our manufacturers joint which, again, was of minor importance.

9. Miscellaneous -

There were no personnel changes for the month of March.



Roy H. Taylor

RHT/ms

cc: C. C. Vignoria 615 H.O.

R. W. Everett 43 H.Y.

W. D. Arbuthnot 39 H.Y.

J. I. Donahue 39 H.Y.

D. G. Thomas 641 H.Y.

John Anouilh, Jr. 521 Atlanta

Ref. 82.324

DEFENDANTS' EXHIBIT 138**Document No. CCC-2876-77****Description of document:****Monthly Activities & Progress Report****Date:****April 21, 1961****Addressed to:****Robert Groner, Jr., General Manager, Southern District, Corrugated Container Division, Continental Can Company****Written by:****James C. Wall, Jr., Sales Service Supervisor, Richmond, Va. plant, Corrugated Container Division, Continental Can Company****Other data:**

Copies to W. Duane Arbuthnot, Manager of Sales, Corrugated Container Division, Continental Can Company; William B. Beams, District Sales Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company; James I. Donohue, Special Sales Representative—National Accounts, Corrugated Container Division, Continental Can Company; Albert B. Winterer, Manager of Customer Service and Box Development, Corrugated Container Division, Continental Can Company; Richard W. Everett, Assistant Manager, Sales Control Department, Continental Can Company.

Messrs. Charlton Root and Earl Goodrich referred to in the Report were respectively Manager of Research and Product Sales Manager and New Product Development, Corrugated Container Division, Continental Can Company.

524 Richmond

612 Richmond

Mr. R. Groner, Jr.

April 21, 1961

Monthly Activities & Progress Report - 612 Richmond - March 1961

1.

Gross Sales To Trade19601961

<u>Budget</u>	<u>Actual</u>
\$390,000	\$413,839

<u>Budget</u>	<u>Actual</u>
\$390,000	\$387,946

106.1% of Budget

102.1% of Budget

Gross Return Per Ton (All Sales)19601961

<u>Shipped</u>	<u>Return</u>
1620	\$255.43

<u>Shipped</u>	<u>Return</u>
1578	\$245.35

Gross Return Per M Sq. Ft. (All Sales)19601961

<u>Shipped</u>	<u>Return</u>
26,027,610	\$15.90

<u>Shipped</u>	<u>Return</u>
24,641,668	\$15.75

2. New BusinessSouthern School Supply - Raleigh, N. C.

Received initial order for \$100.00. Annual volume \$2500.00.

Hanover Packing Company - Hanover, Virginia

Sold this packer of fresh salads initial order for \$500.00. Should be sales of 7500 per year here.

3. Competition


Our competitors are very active and are still quoting low prices. We do not intend to lose any business due to price cutting by our competitors.

4. Business Gained or LostT. A. Cantwell & Company, Inc. - Washington, D. C.

16/ E. 138-1

DEFENDANTS' EXHIBIT 138

Continued

Continued Exhibit Text 

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Mr. R. Groner, Jr.

We lost a \$40,000.00 order for temporary letter cases to Lawrence Paper Company. Lawrence Paper Company had prices lower than ours and since our prices were quoted to government through our jobber we were not allowed to adjust our prices.

5. Prospects for April 1961

Based on past performance for year we should meet our budget of \$360,000.00.

6. Major Prospects

General Mower

We are still working this account and have been promised some orders. However, we have been working account for sometime and we are finding orders hard to come by.

7. Miscellaneous

It appears that we will regain Gwaltney, Inc. We lost this valued account for several months due to price and quality of our 339 medium. We have corrected both price and medium so we should expect orders soon. Our Messrs. Root and Goodrich made a survey of Gwaltney, Inc. for us and indications are that customer is well pleased with their survey.

We are feeling out the large apple growers in an attempt to make some early progress. Our goals are to sell the larger users more containers this year.

James C. Wall, Jr.

JCW JR:pd

CC: W. D. Arbuthnot #39 ✓
W. B. Beams #613
J. E. Donahue #39
A. B. Winterer #33
R. W. Everett #39

NOT RECORDED
MAY 24 1961
DECLINED

4/24/61 138-2

DEFENDANTS' EXHIBIT 140

Document No. CCC-2883

Description of document:**Memorandum****Date:****May 26, 1961****Addressed to:****W. Duane Arbuthnot, Manager of Sales,
Corrugated Container Division,
Continental Can Company****Written by:****Robert Groner, Jr., General Manager, Southern District,
Corrugated Container Division, Continental Can
Company****Other data:****Copy to Lewis B. Pitts, General Manager, Corrugated
Container Division, Continental Can Company.**

CCC-2883

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#39 NEW YORK

V. D. ARBUTHNOT

#524 RICHMOND

MAY 26, 1961

I HAVE JUST COME BACK FROM A TRIP TO NEW ORLEANS, JACKSON, ATLANTA AND RICHMOND. I FIND THAT AT ALL OF OUR SOUTHERN DISTRICT PLANTS THE VOLUME IS INCREASING MATERIALLY AND WE WILL HAVE FULL PRODUCTION AT ALL PLANTS IN MAY AND EVERYTHING LOOKS VERY FAVORABLE VOLUME WISE. HOWEVER, I HAVE NEVER RUN INTO SUCH VEHEMENT AND UNNECESSARY PRICE CUTTING. MEAD, GAYLORD AND UNION SEEN BENT, ALONG WITH KIECKHEFER, ON DESTROYING ANY REASONABLE OR SENSIBLE PRICE IN VIRGINIA.

IN THE ATLANTA AREA GAYLORD, INLAND, UNION, OLIN AND ST. JOE ARE ON THE RAMPAGE. OVER IN MISSISSIPPI AND ALABAMA IT IS SOUTHERN, OLIN, ST. JOE AND MEAD WITH OTHERS TO COME.

THEIR PRICING IS NOT ONLY GIVING AWAY ALL BOX SHOP CONVERSION PROFITS. BUT ON THE BASIS OF MARKET VALUE OF PAPER, THEY ARE EATING INTO MILL PROFITS. I WAS HOPEFUL THAT AFTER THE VOLUME BUILT UP THAT THE LOWER PRICED BUSINESS WOULD PICK UP IN PRICE, BECAUSE I DIDN'T THINK ANYBODY WOULD WANT IT. SO FAR THIS HAS NOT BEEN THE CASE. I DON'T FEEL THAT, AS LONG AS OUR PLANTS ARE OPERATING FULL AT NORMAL PRODUCTIVE CAPACITY, WE SHOULD TAKE THIS STUFF THAT IS IN THE GUTTER. DO YOU AND LEV PITTS AGREE WITH ME?

R. GRONER, JR.

RGJr/ev

CCT L. B. PITTS, #39

10/ EL 140

DEFENDANTS' EXHIBIT 141

Document No. CCC-2884-85

Description of document:**Monthly Activities & Progress Report****Date:****May 29, 1961****Addressed to:****Robert Groner, Jr., General Manager, Southern District, Corrugated Container Division, Continental Can Company****Written by:****William B. Beams, District Sales Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company****Other data:**

Copies to W. Duane Arbuthnot, Manager of Sales, Corrugated Container Division, Continental Can Company; Don G. Thomas, Sales Manager—National Accounts, Corrugated Container Division, Continental Can Company; Richard W. Everett, Assistant Manager, Sales Control Department, Continental Can Company; Robert S. Coakley, General Foreman, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company; Benjamin F. Beeler, Plant Manager, Martinsville, Va. plant, Corrugated Container Division, Continental Can Company.

Edward Gruber referred to in the Report was District Sales Manager, Jackson, Miss. plant, Corrugated Container Division, Continental Can Company.

524 Richmond

W. D. Brown
613 Martinsville
May 29, 1961

Monthly Activities & Progress Report - 613 Martinsville
APRIL 1961

1. Gross Sales to Trade

1960
Budget Actual
300,000 342,100
114% Budget

1961
Budget Actual
320,000 339,350
106.0%

Gross Return Per Ton (Trade)

1960
Shipped Return
1422 240.58

1961
Shipped Return
1471 230.69

Gross Return Per H Sq. Ft. (Trade)

1960
Shipped Return
18,021 18.98
average wt. basis 157.8#

1961
Shipped Return
17,891 18.97
average wt. basis 164.4#

2. New Business

Five new accounts placed initial orders during April 1961 and these were:

<u>Company</u>	<u>Location</u>	<u>Salesman</u>	<u>Value Initial Order</u>
China Grove Cotton Mills	China Grove, N.C.	Sappenfield	\$ 672
Drew Furniture Co.	No. Wilkesboro, N.C.	Turner	494
Mid-State Tile Co.	Lexington, N.C.	Sappenfield	2800
Southern Glove Mfg. Co.	Conover, N.C.	Turner	924
Wholesale Auto Parts	Woodstock, Va.	Heald	114


3. Competition

Prices continue to tumble and the reductions, even in small volume accounts, border on the ridiculous. There is no pattern as the reductions range from 15% to 30% from the general levels in the area six months ago. We have had to meet many of these prices and we have been able to negotiate new levels in some cases that were not as low as prices from competition. We have where justified cut some prices on our own to maintain our volume. Practically all competition is guilty

W. D. Brown

DEFENDANTS' EXHIBIT 141

Continued

Continued Exhibit Text 

Robert Groner, Jr.
524 Richmond

W. B. Beams
613 Martinsville

May 29, 1961

Monthly Activities and Progress Report cont'd

of wanton price cutting. Our return per ton dropped 53¢ from March.

4. Due to District Territory reports being incorrect on credited sales that should have been transferred to 611 Atlanta no comparison of sales to quota can be made for April. This should be corrected in time to include this on May report.

5. Business Gained or Lost

- (a) Sales to Bassett Industries \$58,360 in April.
- (b) Presumably have lost some valuable business at Pulaski Veneer & Furniture Company, Pulaski plant, due to price reduction by Carolina Container and a customer commitment for six months. We are negotiating prices with customer now in an effort to regain business.
- (c) No other volume losses - but gross sales losses.
- (d) No sizable gains except in new accounts.

6. Forecast for May

Current backlog and shipments to date indicate we should exceed plant sales budget for May by \$15,000 to \$20,000.

7. Major Prospects

- (a) Blue Bell, Inc. - Greensboro, N.C. - currently running a packaging survey at all plants in conjunction with Ed Gruber. Expect some volume business in Virginia and North Carolina plants within sixty days.
- (b) Cone Mills - Greensboro, N.C. - we have indications we will receive sizable volume for last six months of 1961.
- (c) Vaughn Furniture Co. - Galax, Va. - if and when business picks up with this firm we should receive some nice volume.

8. Miscellaneous

Nothing of interest to report.

W. B. Beams

WBS:rw

cc:

W. D. Arbuthnot 39

D. G. Thomas 641

R. W. Everette 43

R. S. Conkley 523

D. F. Beeler 523

File

W/ 24 141-28

DEFENDANTS' EXHIBIT 146**Document No. CCC-2975****Description of document:****Memorandum****Date:****August 22, 1961****Addressed to:****Roy N. Taylor, Acting District Sales Manager,
Atlanta, Ga. plant, Corrugated Container Division,
Continental Can Company****Written by:****Bill Hensley, Salesman, Atlanta, Ga. plant, Corrugated
Container Division, Continental Can Company.****[Other data:****None.]****Exhibit Text**

CCC - 2775

271

CLASS. FROM CODE 2010

CONTINENTAL CAN COMPANY, INC.



INTERNAL CORRESPONDENCE

TO Roy Taylor

LOCATION:

FROM Bill Hensley

LOCATION:

ATTENTION:

DATE: 8/22/61

SUBJECT: Long Mile Rubber Company - Spartanburg, S.C.

REFER TO:

I saw Mr. Phillips (Jr.) to day and he says he is covered on his box requirements until the first of the year. He entered an agreement with Mead on August the 9th for 225,000 containers at a low price to beat the price increase that's coming up.

He indicated they use a Trailer load every 10 days and that Mead has about 90% of thier business. He gives Union Bag the remainder of his business largely because they are a local plant. According to Mr. Phillips our prices are in line with Union Bag, but Meads prices are much lower than ourselves and Union Bag.

Mead warehouses a token number of each of his 14 sizes and his trucks makes regular pickups from Atlanta.

Thanks

Bill Hensley

Ref E: 146

DEFENDANTS' EXHIBIT 148

Document No. CBO 8239-8240

Description of document:

Two Page Memorandum

Date:

June 23, 1961

Addressed to:

Joseph T. Tarantino, Jr., Manager, Florida Region

Written by:

Gordon M. Clark, Sales Manager, Greenville, South Carolina

Other data:

Copy to: J. C. Monroe, Plant Manager, Greenville, South Carolina.

Greenville

273

J. P. Tarantino, Jr.

June 23, 1961

Tampa

Gordon M. Clark

PRICE REDUCTION

Dear Joe:

In accordance with our recent discussion, we are listing below the accounts and total 1960 sales wherein we have been obliged to reduce prices either due to competitive conditions or due to a reduction in linerboard prices.

We have reduced prices on the following named accounts principally due to linerboard having been reduced. The first three accounts, we enjoy 100% of their business and each has been approached by competition with various offers of reduced prices so as a matter of protection, we have arbitrarily dropped their prices.

<u>NAME</u>	<u>1960 SALES</u>	<u>APPROX. DOLLARS REDUCTION</u> <u>(Based on Annual Sales)</u>
Stone Manufacturing	\$74,759.	\$3,750
MacShore Classics	39,100.	1,955
Her Majesty Underwear Co.	66,700.	3,335
General Electric	213,100.	2,785
TOTALS	\$397,250.	\$18,825

With respect to General Electric, we enjoy 100% of their business on a contract basis, which carries a bond clause.

The following accounts are those wherein we have been obliged to meet competitive conditions. I have indicated in the fourth column, the approximate percentage of reduction necessary to maintain their business. These accounts are as follows:


<u>NAME</u>	<u>1960 SALES</u>	<u>APPROX. DOLLARS REDUCTION</u> <u>(Based on Annual Sales)</u>	<u>PERCENTAGE</u>
Carlisle Finishing	\$13,000	\$ 650.	5%
Dayco Southern	83,000	4,150.	5%
Hibriten Furniture	51,700	2,585.	5%
Hickory Springs Mfg. Co.	12,560	1,000.	8%
Kent Coffey Mfg. Co.	56,000	2,800.	5%
Manetta Mills, Monroe, N. C.	20,000	3,000.	15%

CRO 8239

Chf. Ex. 148-1

DEFENDANTS' EXHIBIT 148

Continued

Continued Exhibit Text 

Greenville

J. P. Tarantino, Jr.

June 23, 1961

Tampa

Gordon M. Clark

PRICE REDUCTION

NAME	1960 SALES	APPROX. DOLLARS REDUCTION (Based on Annual Sales)	PERCENTAGE
Manetta Mills, Lando, S. C.	24,000	7,900	33%
Hygrade Foods	50,000	4,000	8%
Rocky Mount Mills	19,600	1,560	8%
Southern Bleachery	74,300	7,430	10%
Union Bleachery	<u>125,000</u>	<u>6,250</u>	5%
TOTALS	\$ 529,160.	\$ 41,325.	

The above, to the best of our knowledge, indicates most of the accounts wherein we have had to meet various conditions. We will continue to keep you fully informed of any new developments.

Best regards,

GMC:way
cc: J. C. Monroe

CRO 8240

W/ 44-1480

DEFENDANTS' EXHIBIT 154

Document No. INL 2409-2411 inclusive
[Inland Container Corporation]

Description of document:

Intra company sales report

Date:

March 21, 1961

Addressed to:

R. B. Turner, then Vice President Sales

Written by:

B. E. Roberts, then Sales Manager Macon, Georgia
Sales District

Other data:

Under paragraphs "2 & 3" the reference to "28% to 33% off of the \$12.35 Manual" under "Springs Cotton Mills" means 28% to 33% less than an amount computed by using a \$12.35 board level or charge per 1,000 sq. ft. for 200 lb. test single wall container board. A similar reference is made under "Arnco Mills." "25% off of \$13.00" under "Seapak" means 25% less than an amount computed by using a \$13.00 board level.

INLAND CONTAINER CORPORATION
OFFICE MEMORANDUM

TO: R. B. Turner - 1

DATE: March 21, 1961

SUBJECT: PROGRESS REPORT - FEBRUARY

FROM: B. E. Roberts - 7

1. Volume versus Projection

During February we projected 28,680 M Sq. Ft. and we actually shipped 26,327 M Sq. Ft. or 92% of our projection.

2&3 Price Levels - Competitive Activity

Prices are being reduced in all of our regular accounts by competition and competitive activity is very severe at the present time.

We are listing below the major accounts where prices have been reduced due to competitive activity during the month of February. These prices have been reduced due to competitive activity and we are only meeting situations in these instances and not arbitrarily reducing our prices unless competition has already reduced the existing level in these accounts.

Dover Mills - 5% price reduction due to Union Bag activity

Hill Packing - prices reduced due to Mead-Atlanta activity

Spring Cotton Mills - this account is currently going at approximately 28% to 33% off of the \$12.35 Manual and competitors active in the accounts at the present time are Kleckhefer, Gaylord, Union and National.

Arneo Mills - we recently quoted this particular account 25% off of the \$12.35 Manual and we lost the business at 30% off the manual to Gaylord and Mead-Atlanta.

Pittsburgh Paint - Cair and Union reduced the level in this particular account 7%.

Standard Brands - National Container reduced the price level due to a pick up from their Jacksonville Plant which they can show a definite savings rather than have the customer pick up at Macon, Georgia.

DeSoto Chemical - price reduction Cair and Gaylord.

Gladiola Biscuit - National Container submitted a proposal to Gladiola Biscuit on a basis of a \$39.00/M price furnishing HCN material. Our current price at Gladiola Biscuit is \$40.00/M using QXQ material.

Ref 4. 154-1
INL 2409

-2-

Reynolds Metals Company, Richmond, Virginia - we lost an order for 500,000 cases at \$45.00/M which is the same item we are currently selling Louisville, Kentucky at \$48.50/M. This case has 6.7 M Sq. Ft. and is 125% test material.

Minerals and Chemicals - 50% M Sq. Ft. reduction - competition unknown.

Southern Clays - 50% M Sq. Ft. reduction - competition unknown.

Kemp Corporation - gradual decline - now approximately 22% off of the manual due to Union Bag activity.

Seapak - now 25% off of \$13.00 due to Mead and Union activity, primarily Union Bag.

Aluminum Chair - an additional 7% reduction in February due to Union Bag activity.

Fabro - 5% reduction due to Mead-Atlanta and Atlanta Container activity.

Famous Foods - level reduced due to Ace Box activity; sheet plant in Atlanta primarily buying their sheets from Mead-Atlanta.

Owens-Corning - necessary to retype our contract price list with a substantial reduction due to International Paper reducing their prices because of corrugating medium and also reduction in their set up due to a lower set up being used in some of the other Eastern Plants of Owens-Corning.

R. J. Reynolds Tobacco Company - Mead-Atlanta has picked up one car of miscellaneous cartons off of the current going market, also Richmond Container has reduced this level and has received an order for approximately 300,000 Camel Cases going into the second quarter of 1961.

4 Reductions in cost of territory coverage

Very little progress is being made in reduction of territory coverage expense due to the number of extemporaneous type calls the package engineers must make in order to meet competitive activity and in most instances it is practically impossible to follow any set pattern as far as a sequence of calls are concerned.

5 Elimination of unjustifiable entertaining

We have had no major entertaining during the month of February, however, we do contemplate several major entertainments during the month of March and April and we have been endeavoring to hold back on our entertainment expense so as to be able to justify these major entertainment expenses coming up during the months of March and April.

4/4.1542
INL 2410

-3-

6 Reduction in travel expense

At the present time we are operating somewhat below our overall sales expense budget for 1961 as follows:

We are \$664.00 under our budget on telephone, \$1271.00 under our travel budget and \$1062.00 under our entertainment budget.

These are year to date figures and as far as the telephone expense is concerned this might be erroneous since quite possibly we do not have all of the February telephone figures included in the total for this accounting period.

During 1960 we had a District sales expense cost of .498 cents per M Sq. Ft. For January and February year to date figure we have .402 cents per M Sq. Ft. which is a sizeable reduction in our cost per M Sq. Ft. for the Macon Sales District for the two months of 1961.

7 Progress - Five Major ProspectsH. L. Barbour, Jr.

We have recently negotiated a contract with Dan River Mills for the balance of 1961 amounting to approximately \$100,000.00.

It is our understanding that we will receive approximately 100% of the business at Gladiola Biscuit which should net us approximately ten million feet during 1961.

P. J. Prinz

At Carling Brewing Company we have received a trial order for a retrip beer case on which we expect definite results and which we hope also will lead us back into the picture as far as their can beer carton requirements are concerned.

T. A. Gordon

No definite reaction as yet on our program for Tom Gordon's five major prospects although we expect a definite reaction in several instances very shortly.

R. L. Bridges

We have received our first release from Dixie Paint and Vernish Company and have been promised additional business from this concern as long as we are competitive price-wise and assuming that our service and quality is also satisfactory.

R. E. King

Quite a few new accounts have been opened up since the first of the year by Rad King, however, we have not been able to secure any definite business from the five major prospects but we expect some progress on these five majors to be shown in the very near future.

P. H. Board

No progress of any consequence on the five major prospects of Paul Board at the present time.

11/11/61
4/154-3

DEFENDANTS' EXHIBIT 155

Document No. INL 2415-16
[Inland Container Corporation]

Description of document:

Intra company sales report

Date:

April 7, 1961

Addressed to:

F. M. Talbot, then Vice President and
Southern Regional Sales Manager—

Copy to R. B. Turner, then Vice President Sales

Written by:

O. D. Lloyd, then Sales Manager Louisville
Sales District

Other data:

[None.]

April 7, 1961

F. M. Talbot—7
cc: R. B. Turner—1

O. D. Lloyd—15

**MONTHLY PROGRESS REPORT
LOUISVILLE DISTRICT**

1. Volume

Budget 17.6M [✓]

Actual 14.3M [✓]

—Approximately 2.3 below budget

Volume in our area is directly affected by economic conditions, particularly in the hard goods industry. We do not anticipate any particular improvement in this end of our business in the immediate future.

2. Price Level

Budget—\$15.20


Actual \$14.76

Approximately 44¢ per 1000 sq. ft. below budget, reflecting the economic market conditions in this area and continued severe competitive conditions.

3. We are currently making an analysis of the cost of our territorial coverage and upon completion of this we anticipate to be able to take steps to reduce our current costs.
4. Our travel expense continues well within budget, however, we are finding it necessary to make trips to call on our customers that would not normally be necessary, which is again directly due to the acute competitive activity.
5. We are continually being forced to meet competitive prices in order to hold our position at various accounts. The recent reduction in the market of corrugating medium has induced some of our competitors to offer this reduction in the cost of boxes to customers in our area and we have repeatedly been forced to meet the situation. As an example of the competitive conditions, we have just lost the business at the Klarer Company based on prices submitted by our competitor the Mongel Company, which are approximately 10% below prices we had enjoyed during the first quarter of this year. We find that other competitors of ours in this area are also quoting prices at this account considerably below our market. We will have an opportunity to, of course,

DEFENDANTS' EXHIBIT 155

Continued

Continued Exhibit Text 

regain this business the first of July. However, at present it appears we will have to substantially reduce our current price in order to regain this business which amounts to approximately 750M to 800M[/] per quarter.

6. Major Accounts

- a. General Electric—Dishwasher & Disposall Dept. We are making excellent progress here and expect to obtain the container business for a newly designed dishwasher which they will be in production on approximately July 1st of this year. This business will amount to approximately 110M[/] per month.
- b. Ence Container—We have received our first orders from this concern which amount to approximately 1 M[/]. This business should grow rapidly and should amount to 15M to 20M per year.
- c. Russell Springs Mfg.—Ken Potter has really opened this account for us and although the annual usage is rather small it is a clothing manufacturer and should be steady business for us in the amount of 750M to 1 M[/] per year.
- d. American-Radiator—We have recently shipped our first order of containers for their Iron Goods Division and believe our position there will continue to grow so that we should enjoy at least 7M[/] of additional business with this customer this year.

No particular progress to report at other major prospects at this time.

CDL:we

DEFENDANTS' EXHIBIT 167

Document No. INL 2774
[Inland Container Corporation]

Description of document:
Intra company memorandum

Date:
April 21, 1961

Addressed to:
G. B. Elliott, then President

Written by:
C. F. Smith, then Vice President Marketing

Other data:
"Owens" refers to Owens-Illinois

G. B. Elliot
cc: P. F. Tolson

April 21, 1961

AMERICAN TOBACCO

C. F. Smith

We lost all business with American Tobacco Company for the 2nd quarter due to extremely low prices quoted by Owens. They received orders for approximately 360,000 cases covering the entire requirement.

Comparative prices are as follows:

	HELAND	OWENS
Pall Mall	\$ 158.00	\$ 136.00
Lucky Strike	137.50	127.50

Owens has not previously participated in this business and the above prices are substantially below our cost.

/jrh

INL-2774

4/24/67

DEFENDANTS' EXHIBIT 169

Document No. INL 2776
[Inland Container Corporation]

Description of document:

Intra company memorandum

Date:

May 1, 1961

Addressed to:

No specific addressee indicated but in fact delivered to Sales Manager Macon, Georgia Sales District who was then B. E. Roberts

Written by:

Herbert L. Barbour, then Macon Sales District Package Engineer

Other data:

[None.]

FORM 508

INLAND CONTAINER CORPORATION
OFFICE MEMORANDUM

TO:

DATE May 1, 1961

SUBJECT: GLADIOLA BISCUIT COMPANY

FROM Herb Barbour

I had made an agreement with Gladiola Biscuit Company to furnish them with 100% of their requirements on the following basis:

RSC 12 5/8 x 8 7/16 x 5 1/2, QXQ, Glue Lap, 1c4p, Truckload lots
\$ 40.00 per M

Owens-Illinois came in and offered to run the same cartons at 39.00 per M and to furnish NxN material. On this basis they ran 1 truck before we took the business on 100%.

Two weeks later they contacted the Vice President of the company and quoted 37.50 M on the same carton furnishing NxN if they could take on the Dallas and Greensboro plants 100%. This offer was turned down by Mr. McGill who is a very good friend of Inland.

As you can notice, Owens-Illinois has been quite active in this area with their prices. They have depressed prices considerably.

GREENSBORO PLANT = 10 MM YEAR
DALLAS PLANT = 7 MM YEAR

INL-2776

DEFENDANTS' EXHIBIT 170

Document No. INL 2778
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

May 1, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland

Written by:

H. L. Barbour, then Sales Manager, Macon, Georgia
Sales District

Other data:

To: L. H. Robinson - 1

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential - M2	Report Date
P.H. Harris Co. W. Stead - Stead, D.C.	Position	3-174	10 M2	5-1-61
CECILE BUSTIE	Price Quoted By Inland	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information Received By	
Description - (Size, Style, Text, etc.)		Total Amt. of Order	Reported Competitors Price -	Competitors If Business Lost, Why?
#10 ASC 16 1/2 x 20 1/4 4x4, 275" SW 20.30, Type	957.10		MENGEL	914.95
#14 ASC 21 x 14 1/2 x 30 1/4, 275" SW 20.30, Type	579.80			553.25

Disposition

ME. BUSTIE ASKED FOR PRICE REDUCTION DUE TO DECREASE IN ~~TEXT~~ COLLECTOR MEDIUM. ME. J.D. EVANS OF MENGEL (WHICH IS PRIME SOURCE IN ACCOUNT) CUT PRICES ON ENTIRE LIST (Per 2 samples shown). MA. BUSTIE FURNISHED ME WITH A COPY OF MENGEL'S PRICES WHICH WE MET IN ITS ENTIRETY.

Form 602
12/29-2500

2. E. 170

DEFENDANTS' EXHIBIT 171

Document No. INL 2779
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

May 1, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland

Written by:

H. L. Barbour, then a Macon, Georgia Sales District
Package Engineer

Other data:

"Cont Can" refers to Continental Can

To: L. Robshaw - 1

cc:

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Pkg. Engineer	Annual Potential-192	Report Date
De Soto Chemical Company, Greenville, NC.		Verbal 7-12-4	8 Mar	5-1-6
Information Supplied By	Position	Per Letter Attached	Information Received By	
J.O. K. 213, Diller & F. W. H. H.		Reported	Competitors	If Business Lost, Why?
Description - (Size, Style, Test, etc.)	Price Quoted By Inland	TOTAL AMT. of Order	Competitors Price	
<p>41R(END)</p> <p>RSC. 13 1/2 x 7 1/2 x 13 3/4</p> <p>K.K.</p>	86.95	15m	<p>GAYLORD</p> <p>CUT COW</p> <p>CAROLINA</p> <p>82.90</p>	<p>Lower price</p>
<p>Remarks</p> <p>I lost 1 order and then met pine put in my competitors. Carlin Chittam cut pine first, then Gaylor cut that price. 11.73 1/2</p> <p>INI: 2779</p> <p>Form 6021 12/29-2500</p>		<p>Disposition</p> <p>Mr. Roberts also mentioned that 2 firms told him to send them an order and to put whatever price he wished on the order.</p>		

DEFENDANTS' EXHIBIT 173

Document No. INL 2786
[Inland Container Corporation]

Description of document:

Intra company/lost business report

Date:

May 22, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Other data:

"C Corp" and "H & D" refer to Container Corporation
and Hinde & Dauch Paper Company, respectively.

"13.00 manual" refers to the Inland Manual using a
\$13.00 board level or charge per 1000 sq. ft. for 200
lb. test single wall container board.

DEFENDANTS' EXHIBIT 177

Document No. INL 2790
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

June 26, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of Sales
for Inland—Copy to B. E. Roberts, then Sales Manager
Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Other data:

The figures, symbols and words under "Price Quoted
By Inland" mean 25¢ per thousand square feet under
the Inland manual using a \$13.00 board level or
charge (as defined on Document No. 2789) and \$25
set up charge.

The abbreviations "C Corp" and "O-I" refer to Con-
tainer Corporation and Owens-Illinois.

Exhibit Text

* Handwritten text under "Remarks" is as follows:

"had to come off my price 20% but will not lose any
volume—25% off prices was C Corp—OI was 20%
off—"

LOST ACCOUNT OR LOST POSITION INFORMATION

To: L. H. Robinson - 1 ✓
cc: C. F. R. - 2From: (District) *Michigan*

Customer <i>Michigan</i>	Location <i>Ann Arbor, Mich.</i>	District & Eng. Engineer <i>1-176 & 1-177</i>	Annual Potential <i>\$1,000</i>	Report Date <i>1-26-81</i>
Information Supplied By <i>1-176 & 1-177</i>	Position <i>1-176 & 1-177</i>	Verbally Let Per Letter Attached <input type="checkbox"/>	Information Received By <i>1-176 & 1-177</i>	
Description (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order	Competitors Price	If Business Lost, Why?
<i>All Sizes</i>	<i>15¢ 11-1 (was 13¢) name new cut up.</i>	<i>C. C. R. - D. I. - L. J. - H. J. -</i>	<i>30 to 35%</i>	<i>See below</i>

Disposition

Remarks

*had to come off my price 20%
but will not lose any volume -
25% off price were 2 Corp -
O I was 30% off -*

INL 2790

Form 6421
12/59-2500

DEFENDANTS' EXHIBIT 180

U. S. v. Container Corporation et al.

Document No. INL 2795

[Inland Container Corporation]

Description of document:

Intra. company lost business report.

Date:

July 18, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District.

Written by:

Tom Gordon, then a Macon, Georgia Sales District
Package Engineer.

Other data:

[None.]

To: L. H. Scholten - 2
cc: B. E. Scholten - 2

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7-12V

Customer <u>Thasalla</u>	Location <u>San Francisco, CA</u>	District & Eng. Engineer <u>7-12V T. H. Scholten</u>	Annual Potential - \$2 <u>10,000</u>	Report Date <u>7-15-11</u>
Information Supplied by <u>11/1/11</u>	Position <u>SA</u>	Verbally <u>by</u>	Information Received by <u>T. H. Scholten</u>	
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors	Competitors Price
<u>Entire Requirements</u> <u>180% Synthetic Fiber</u> <u>predominantly J, V, J₂</u>	<u>Normal</u> <u>20% on</u> <u>by mail</u> <u>less 10%</u> <u>on balance</u>	<u>\$250,000</u> <u>monthly</u>	<u>Ten State</u> <u>Carolina</u> <u>Lease</u> <u>Union</u> <u>Continous</u> <u>Wholesale</u> <u>Direct</u> <u>Own-ship</u>	<u>Approx</u> <u>234.75%</u> <u>off normal</u>
				<u>we were 4th</u> <u>in price</u>

Disposition

Quotation made on what amounts to a 2-year contract, with a firm price for 1 year, as well as which period contract will be negotiated for the 2nd year, with proviso that no increase will be more than 7% the only basis for any increase will be based on the labor.

150

It will find out who of the business next week.

It should be that, all the we got no business, or had established ourselves will blame for future relations.

As has a past connection him to and out of style.

12/19-2950 will not have realized the savings involved.

12/19-2950 will not have realized the savings involved.

12/19-2950 will not have realized the savings involved.

DEFENDANTS' EXHIBIT 181

Document No. INL 2798
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

July 28, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales District
Package Engineer

Other data:

"CCA" refers to Container Corporation and "Union"
to Union Bag.

To: L. H. Robisher - 1

cc: W.F. Robisher - 2

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential-113	Report Date
PARIS HANDBERCHES CO	ALBUQUERQUE, NM	7-123	5.6	7-25-6
Information Supplied By	Position	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information Received By	
PARIS	PARIS		W.F. Robisher	
Description	Price Quoted	Total Amt. of Order	Competitive Price	If Business Lost, Why?
(Size, Style, Test, etc.)	By Inland			
RSC-KYK-TAPE IPIC				
16YH X 6	\$56.10	15.17	79.50	
16YH X 9	94.50	PER 1440	86.00	
16YH X 10	116.70		99.50	
16YH X 13	124.05		105.00	
16YH X 15	135.65		121.00	
Remarks	Disposition			

C.C.A. QUOTED THESE PRICES &
CUSTOMER LET US MEET THEM.
I KEEP MOST OF THE BUSINESS.

INL-2738

Sep. 26. 1961

Form 6021
12/59-2500

DEFENDANTS' EXHIBIT 185

Document No. INL 2803
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

September 29, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon; Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales
District Package Engineer

Other data:

"CCA" refers to Container Corporation.

See L. E. Robinson - 2

on C.E. BRENNIS-7

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) 7

Customer	Location	District & Eng. Engineer	Annual Potential-192	Report Date
<u>PARNS HANFELNER</u>	<u>ALCOCKA, C.A.</u>	<u>7-127</u>	<u>66</u>	<u>9-28-41</u>
Information Supplied by	Position	Verbally <u>by</u>	Information received by	
<u>THE PARNS</u>	<u>CUTLER</u>	Per Letter Attach <input type="checkbox"/>	<u>C.E. BRENNIS</u>	
Description	Price Quoted	Total Amt. of Order	Competitors Price	If Business Lost, Why?
(Size, Style, Test, etc.)	By Inland			
<u>RSC 16 YH X 6</u>	<u>878.50</u>	<u>157</u>	<u>UNION BAG</u>	<u>PRICE</u>
<u>" 16 YH X 8</u>	<u>86.00</u>	<u>TO 10.00</u>	<u>C.C.A.</u>	
<u>" 16 YH X 10</u>	<u>99.50</u>			
<u>" 16 YH X 13</u>	<u>105.00</u>			
<u>" 16 YH X 15</u>	<u>122.00</u>			
<u>KXK 100 TIRE</u>				

Remarks

AFTER WE MET C.C.A. PRICES. AND
THAT A CONTRACT FOR 25000 REIMS
UNION BAG CUT OUR PRICE BY
APPROX. 10% & SHIPASO CUSTOMER
4 TROU LOADS, THEY SHIPASO.
RETURNER AUG. 15TH & 5007-5TH.

712-2803

Form 6001
12/29-2900

DEFENDANTS' EXHIBIT 194

Document No. INL 2826
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

March 27, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales
District Package Engineer

Other data:*

[None.]

Exhibit Text

* Handwritten text under "Remarks" is as follows:
"Met this level and received order—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District, Name)

TOTALS:
cc:

Customer <u>Co. Mfg. Co.</u>	Location <u>Highland Park</u>	District & Eng. Engineer <u>1-12-18 J. B. B.</u>	Annual Potential-MB <u>3.0</u>	Report Date <u>2-27-27</u>
Information Supplied by <u>Bill Hegermehl</u>	Position <u>Gen. Mgr.</u>	Verbal <u>Yes</u>	Information Received by <u>Bill Hegermehl</u>	Report Date <u>2-27-27</u>
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Total Amt. of Order	Reported Competitors Price	If Business Lost, Why?
#6016 ASC, KXK, 2" x 10" x 18" 19-3/4" x 18 5/8" x 23-	305.60 per 5 m per	\$1437.25	587.45 per 5 m per	

Remarks
Wid. this land & record
Order -

2826
J. E. 194
Form 6021
12/29-2700

DEFENDANTS' EXHIBIT 195

Document No. INL 2828-29
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

April 3, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales
District Package Engineer

Other data:

The reference to "13.00 manual" refers to a \$13.00 board level or charge (as defined in Document No. 2789). The references in Document No. 2829 to "1T/L" and "3T/L" are to one truck load and three truck loads, respectively.

Exhibit Text

* Handwritten text of "Remarks" is as follows:

"Lost an order to Union because of this reduction—
Met this price and took an approx \$3,500.00 order.—"

For Index Index Index
 See Index Index Index

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District) Western

Customer <u>W. B. Corp.</u>	Location <u>St. Louis, Mo.</u>	District & Eng. Engineer <u>W. B. Corp.</u>	Annual Potential <u>400</u>	Report Date <u>11-3-61</u>
Information Supplied By <u>W. B. Corp.</u>	Position <u>Asst. Mgr.</u>	Verbally <u>Yes</u>	Information Received By <u>W. B. Corp.</u>	
Description (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. Per Letter Attached <input type="checkbox"/>	Competitors Price	If Business Lost, Why?
<u>W. B. Corp.</u>	<u>15% off</u> <u>1800 annual</u>	<u>Union</u> <u>Comp</u> <u>(signed)</u>	<u>20% off</u> <u>1300 annual</u>	<u>See below</u>
Remarks		Disposition		
<p>lost in order to know because of this production - met this price and took on approx \$3,500.00</p> <p>Order -</p>		<p>2</p>		


71-2828

of 26 1954

Form 6021
12/59-2900

DEFENDANTS' EXHIBIT 195

Continued*

Continued Exhibit Text 

* Handwritten text of "Remarks" is as follows:

"Union Bag Camp Paper cut the level on this account from 20% off \$13.00 manual to 23% off, received 1 T/L & I met the price and received 3 T/L. Buyer states he doesn't want the price to go below this because he feels we are losing money at this low rate—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District) _____

Customer <u>P. C. C. Co. P. A. H. Co.</u>	Location <u>At. H. Co. P. A. H. Co.</u>	District & Eng. <u>At. H. Co. P. A. H. Co.</u>	Annual Potential <u>7.5</u>	Report Date <u>3-27-41</u>
Information supplied by <u>At. H. Co. P. A. H. Co.</u>	Position <u>At. H. Co. P. A. H. Co.</u>	Vertically <u>At. H. Co. P. A. H. Co.</u>	Information received by <u>At. H. Co. P. A. H. Co.</u>	
Description - <u>At. H. Co. P. A. H. Co.</u>	Price Quoted <u>At. H. Co. P. A. H. Co.</u>	Total Amt. of Order <u>At. H. Co. P. A. H. Co.</u>	Competitors Price <u>At. H. Co. P. A. H. Co.</u>	If Business Lost, Why? <u>At. H. Co. P. A. H. Co.</u>
(Size, Style, Test, etc.)	By Inland	Reported Competitors		

See below -

Remarks	Disposition
<p>Western Poly Comp. Paper - lost - the lost on this account from 20% of 13000000 to 2.3% off the normal 1 TL + 2 input the more and passed 3 TL Paper cloth the company wants the paper to go back to the factory the paper was lost during moving the price -</p>	<p>4/19/5-24</p>

DEFENDANTS' EXHIBIT 198

Document No. INL 2841
[Inland Container Corporation]

Description of document:

Intra company lost business report

Date:

March 13, 1961

Addressed to:


L. H. Robishaw, then Administrative Manager of Sales for Inland—Copies to B. E. Roberts, then Sales Manager Macon, Georgia Sales District and F. M. Talbot, then Vice President and Southern Regional Sales Manager

Written by:

Tom Gordon, then a Macon, Georgia Sales District Package Engineer

Other data:

[None.]

Exhibit Text 

DEFENDANTS' EXHIBIT 199

Document No. INL 2842
[Inland Container Corporation]

Description of Document:

Intra company lost business report

Date:

May 15, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. E. King, then a Macon, Georgia Sales District
Package Engineer

Other data:*

"CCA" refers to Container Corporation.

Exhibit Text

* Handwritten text of "Remarks" is as follows:

"We have had this business for over a year. CCA
cut our price & tried to tie up business for re-
mainder of year. Customer gave them one order
& agreed to let us meet price on future orders".

To: L. R. Bishop - 1
cc: E.C. Nichols

LAST ACCOUNT OR LAST POSITION INFORMATION

From: (District, 7)

Customer N.C. 11115	Location A 7 4 1-15 C.A	District & Eng. Engineer 7-117	Annual Potential-1981	Report Date
Information Supplied By 11115	Position N.C. 11115	Verbally <input checked="" type="checkbox"/> Per Letter <input checked="" type="checkbox"/> Attached <input type="checkbox"/>	Information Received By	15-67
Description - (Size, Style, Test, etc.)	Price Quoted By Inland	Total Amt. of Order.	Reported Competitors Price	If Business Lost, Why?
17 1/2 11.718 27X24X 34 32X32 5717 PL	6795.15	\$1,596.70	C.C.A	\$700.00
				PHIC.
Remarks		Disposition		

11115 HAD THIS BUSINESS FOR A YEAR. C.C.A. LET HAD PRICE & TARIFF TO THE 10 BUSINESS FOR REMAINDER OF YEAR. CUSTOMER GAVE THEM ONE ORDER & AGREED TO LET HAD. PHIC. C.A. FUTURE ORDERS.

4/1/199

INT-284
Form 8021
12/22-2500



DEFENDANTS' EXHIBIT 202

Document No. INL 2846-48

Description of document:

Intra company lost business report

Date:

June 26, 1961

Addressed to:

L. H. Robishaw, then Administrative Manager of
Sales for Inland—Copy to B. E. Roberts, then Sales
Manager Macon, Georgia Sales District

Written by:

R. L. Bridges, then a Macon, Georgia Sales District
Package Engineer

Document No. 2846

Other data:*

"13.00 manual" refers to a \$13.00 board level or
charge (as defined in Document No. 2789). "C Corp"
refers to Container Corporation.

Document No. 2847

"13.00 new set up" refers to a \$13.00 board level or
charge and a \$25 set up charge. "OI" refers to
Owens-Illinois.

Exhibit Text

*** Handwritten text of "Remarks" is as follows:**

(1st page) "C Corp. put prices in 35% off 13.00
manual. didn't receive any business. Will have to
meet these prices to stay in this account"

(2nd page) "C Corp. put in prices 35% below our
level in this account had to meet this but will not
lose any volume—"

(3d page) "had to come off my price 20% but will
not lose any volume—25% off prices were C Corp—
OI—was 20% off—"

LOST ACCOUNT OR LOST POSITION INFORMATION

From: (District) San Fran

Customer <u>Comp. Corp.</u>	Location <u>Highland Ave.</u>	District & Eng. Engineer <u>1-16-28</u>	Annual Potential - \$ <u>100</u>	Report Date <u>8-28-81</u>
Information Supplied by <u>W.H. H. H.</u>	Position <u>1-16-28</u>	Verbally <u>1-16-28</u>	Information Received by <u>W.H. H. H.</u>	
Description (Size, Style, Text, etc.)	Price Quoted By Inland	Per Letter Attached <input type="checkbox"/>	Competitors Price	Why?
<u>all sizes</u>	<u>20% off</u> <u>13.00</u> <u>100% wool</u> <u>100% Sat. 100%</u>	<u>See below</u>		
Remarks	Disposition			

C Corp. put price in
35% off 13.00 promised
I didn't receive any business
will have to meet this account
given to them in the account
W.H. H. H.
6-28-81

Form 6021
12/59-2500

2848
202-1

LOST ACCOUNT OR LOST POSITION INFORMATION

Trans (District) Memo

(342)

Customer <u>ERO M9 G. Hartzel</u>	Location <u>GA</u>	District & Reg. Engineer <u>1-126 JTB</u>	Annual Potential- <u>1.5</u>	Report Date <u>6-28-61</u>
Information supplied by <u>W. B. 2125 E</u>	Position <u>GA 2125 E</u>	Verbally <input checked="" type="checkbox"/> Per Letter Attached <input type="checkbox"/>	Information provided by <u>J. H. Hartzel</u>	
Description - (Size, Style, Test, etc.)	Price Quoted By Inland <u>1300 New</u> <u>Setup</u>	Total Amt. of Order	Reported Competitors <u>None & OI</u>	Competitors Price <u>See below</u>

Disposition

Remarks

C Corp. put in price 85%
below our level in this account
had to meet the bid and will not
lose any volume -
W. B. 2125 E
JTB
6-28-61

127-2847

LOST ACCOUNT OR LOST POSITION INFORMATION

From (District) MEMPHIS

Customer <u>John M. Swisher & Sons -</u>		Location <u>Jacksville, Fla.</u>		District & Eng. Engineer <u>7-126-218</u>		Annual Potential <u>70</u>		Report Date <u>8-26-61</u>	
Information Supplied By <u>WILLIAMS</u>		Position <u>SA</u>		Verbally <u>Per Letter Attached</u>		Information Received By <u>W.D. Palmer</u>			
Description (Size, Style, Text, etc.)		Price Quoted By Inland		Total Amt. of Order		Reported Competitors		Competitors Price	
<u>All Sizes</u>		<u>25¢ 112</u> <u>under 130</u> <u>normal 112</u> <u>set up</u>				<u>C Corp.</u>		<u>20 to 25%</u>	
						<u>O.I.</u>		<u>under</u>	
						<u>England -</u>		<u>over</u>	
								<u>hard</u>	
								<u>see below</u>	
Remarks		Disposition							

HAD to come off my price 20%
but will not lose any volume -
25% off price were C Corp -
O.I. 20% off -

cl/ L. 2023
REL 2843

DEFENDANTS' EXHIBIT 203

Document No. INL 2853-54
[Inland Container Corporation]

Description of document:

Intra company memorandum and
customer quote sheet

Date:

October 30, 1961

Addressed to:

R. B. Turner, then Vice President Sales—Copy to
C. F. Smith, then Vice President Marketing

Written by:

F. M. Talbot, then Vice President and Southern
Regional Sales Manager

Other data:

[None,]

Exhibit Text

*** Body of text is as follows:**

"I am attaching prices that were quoted Chattanooga Glass Company by Inland, and directly below the prices that were quoted by St. Joe Paper Company and Union Bag.

"This will give you an idea of the vicious type of pricing that we were faced with at this account. We raised prices at Chattanooga Glass Company, on October 1st, and our competitors reduced their market levels making our position look ridiculous.

"As you know this is major account for the Rome Sales District and we were forced to meet the competitive market".

R. B. Turner - 1
cc: C. P. Smith - Exec. Offices

October 30, 1951

Competitive Prices - Chattanooga Glass Company

F. H. Talbot

I am attaching prices that were quoted Chattanooga Glass Company, by Inland, and directly below the prices that were quoted by St. Joe Paper Company and Union Bag.

This will give you an idea of the vicious type of pricing that we were faced with at this account. It will show prices at Chattanooga Glass Company, on October 1st, and our competitors raised their market levels making our position look ridiculous.

As you know this is a major account for the East Sales District and we were forced to meet the competitive market.


/ch

attachment

INTL-2853

DEFENDANT'S EXHIBIT 203

Continued

Continued Exhibit Text 

Chattanooga Glass Company
Chattanooga, Tennessee

NO. IN.	SIZE	QTY	WT.	HT.	TH.	WT.	HT.	TH.	WT.	HT.	TH.
3207	Sec. 3 Ctbl. Sheet	17 5/8 x 12 3/16 x 7 5/8	5.97	129	200	1622	-	23.000	47.50	(St. Fee)	73.57
3207	Sec. 3 Ctbl. Sheet	19 5/8 x 12 5/16 x 7 5/8	5.95	129	200	1622	-	23.000	95.00	(St. Fee)	77.59
3210	Sec. 3 Ctbl. Sheet	20 1/4 x 12 3/4 x 9 1/4	6.73	129	200	1622	-	23.000	119.89	(St. Fee)	95.35
3206	RSC	17 x 12 1/4 x 11 11/16	12.72	111	150	1642	Stitch	23.000	135.15	(St. Fee)	103.02
3206	RSC	20 x 12 3/8 x 7 11/16	10.64	111	150	1642	Stitch	23.000	107.15	(St. Fee)	97.00
3210	RSC	20 3/8 x 12 1/2 x 9 11/16	11.25	111	150	1642	Stitch	23.000	140.51	(St. Fee)	103.00
3212	RSC	22 1/4 x 13 3/4 x 9 11/16	12.02	111	150	1642	Stitch	23.000	120.50	(St. Fee)	123.33
3207	Sec. 3 Ctbl. Sheet	15 1/2 x 10 x 3 7/8	3.00	129	200	1622	-	23.000	47.00		
	(5) AFT	10 x 3 7/8	1.50	97	125	Plain	-	23.000	57.00		
	(3) AFT	15 1/8 x 3 7/8	1.23	97	125	Plain	-	(St. Fee)	73.22		

Ref. 46.203-1

INL2851

DEFENDANTS' EXHIBIT 206

Document No. IPC-00945

Description of document:

Internal Memorandum re Sales Policy

Date:

September 11, 1961

Addressed to:Ed Agar, then Southern Regional Manager Container
Division, International Paper Company**Written by:**P. C. Strine, then General Sales Manager, Container
Division, International Paper Company**Other data:**J. R. "Bob" Grayson, Plant Manager, Springhill,
Louisiana, Container Division, International Paper
Company

INTERNATIONAL PAPER COMPANY

321

CONTAINER DIVISION

New York Office

FOR USE ONLY WITHIN THE COMPANY

Date September 11, 1961

Subject

**Sales Policy on Containers
East of the Rocky Mountains
Effective August 15, 1961**

To

**Mr. E. Agar
Springhill**

Reference is made to your note of August 23rd which has to do with Bob Grayson's note of August 22nd, the subject, Price Increases.

We agree that on those accounts listed in Mr. Grayson's note it will be necessary to do what competition does if we are to hold our business.

You should, of course, increase prices if competitive conditions change, since, as you know, higher prices for our products are so badly needed.


**P. S.
P. C. Strine**

sa

cc: Mr. J. R. Grayson

DEFENDANTS' EXHIBIT 211

Document No. IPC-2196

Description of document:**Internal Memorandum****Date:****July 15, 1961****Addressed to:****A. B. Damon, then General Manager, Container Division, International Paper Company****Written by:****J. R. Grayson, Plant Manager, Springhill, Louisiana, Container Division, International Paper Company****Other data:****Copies to other interested International Paper Company Container Division personnel****Structoglas is a customer of International Paper Company****Lennie Berry, then Salesman, Springhill, Louisiana, Container Division, International Paper Company****"Owens Illinois" refers to defendant Owens-Illinois Glass Company. "Memphis" refers to Owens-Illinois' Container Plant at Memphis, Tennessee.****Exhibit Text** 

INTERNATIONAL PAPER COMPANY

323

**CONTAINER DIVISION
Springhill Plant**

FOR USE ONLY WITHIN THE COMPANY

Date July 15, 1961

Subject

**Supplement to Competition Report—
Structoglas, Grand Junction, Tennessee**

To

Mr. A. B. Damon

Supplementing our Competition Report mailed yesterday, Lennie Berry reported this morning that Owens Illinois Memphis contacted Structoglas yesterday afternoon and asked for an order. They were told that the next order would go to International Paper and Owens replied, "Don't give the order to IP and I will cut your price another \$2.00 per thousand square feet."

No additional order has been placed with our competitors and Lennie has an appointment with our customer early next week. After this call, further details concerning this situation will be forwarded.

**Bob
J. R. Grayson**

JRG:cp

**cc: Messrs. Snyder
Strine
Agar
McMahon
Fasley
Estes
Goolety
Jellay
Von Kerna**

DEFENDANTS' EXHIBIT 235

Document No. OWE-381

Description of document:

Intra-company correspondence

Date:

December 7, 1961

Addressed to:


William Laimbeer, then Sales Manager, Orlando, Florida, Sales Office, Forest Products Division, Owens-Illinois Glass Company.

Written by:

Johnny Schwarz, Jr., then Salesman, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Other data:

Copy addressed to M. H. Morgan, then Sales Service Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text 

Form NO-118

OWENS-ILLINOIS

INTRA-COMPANY (1) CORRESPONDENCE

OWE-281

Attention of

Mr. W. Laimbeer

Subject

ST. LEO ABBEY - St. Leo, Florida

PAPER PRODUCTS DIVISION
(Formerly National Container Corporation)
Jaimbeer-Pearl Plant

December 7, 1961

Bill, I was very disappointed today in talking with Father James, Order of St. Benedict, concerning our prices on the express citrus cartons which we quoted in our quotation dated November 28, 1961.

By virtue of this memo I am advising you that we lost an order of 2500 1 3/5 bushel cartons to St. Joe Paper Company. Father James told me that St. Joe had offered him the truckload discount on the 1 3/5 bushel size for a 2500 quantity and that their price was \$794.00 per M compared to our price of \$937.57.

As far as the 3/4 bushel and the 1 bushel cartons are concerned Father James plans to order 5000 of each of these sizes immediately after the first of the year. We have approximately two weeks to get our prices competitive or he will be forced to give St. Joe the entire order. Our price on 2500 quantity of the 3/4 bushel was \$444.28 per M sets as compared to St. Joe's price of \$436.00. Our 1 bushel price in 5000 lots was \$494.47 compared to St. Joe's price of \$435.00 for 5000 lots. I would advise that St. Joe is also offering a truckload discount on the 5000 lot.

I certainly feel that Father James is above reproach and evidently does have these prices from St. Joe Paper Company. He did indicate to me that he appreciated the methods of our solicitation and he would be more than happy to give us the other two sizes provided that we were competitive. Would you please look into this and let me have your decision as soon as possible.

Thank you.


Johnny Schwarz

JS/ae

cc: Mr. M. H. Morgan ✓

DEFENDANTS' EXHIBIT 250

Document No. OWE-424

Description of Document:**Intra-company Customer Competitive Information Report****Date:****January 23, 1962****Addressed to:****Tom Brown, then Vice President, Marketing, Forest Products Division, Owens-Illinois Glass Company****Written by:****Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company****Other Data:****Copies addressed to: Dan Brochin, then Manager, Production and Sales Analysis, Forest Products Division, Owens-Illinois Glass Company; and to T. M. Cox, Jr., then Vice President and Southeastern Region General Manager, Forest Products Division, Owens-Illinois Glass Company.****Exhibit Text** 

Form PP 1017 JWE

CUSTOMER COMPETITIVE INFORMATION

Mr. Tom Brown - Toledo FPO

TO: ~~XXXXXXXXXXXXXXXXXXXX~~

v/s Mr. Dan Brochin - Toledo FPO

Mr. T. M. Cox, Jr.

FROM: (please see source) Atlanta FPO

Customer & Location		Plant & Salesman		Annual Potential		Report Date	
Union Yarn Mill Jacksonville, Alabama		Atlanta - H. Jess		\$40,000		1/23/63	
H. Miller General Manager		<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Information Received By: Leon Hardman			
Description		If Business Lost Why?		Price Quoted By O. L.		Total Amount of Order	
3rd OL 4 1/2 x 19 x 27 St. Plain 350W ON		Price		847.00		\$25,000 Approx.	
						Container Corp. of America	
						770.00	
						Reported Competitors	
						Competitive Price	

Remarks

CCA took a blanket order at our old selling price. The blanket order covers 1962 with a paper increase clause. This account has been a customer of Owens-Illinois since 1954. We did over \$24,000 in 1961.

Disposition

05-7-70

DEFENDANTS' EXHIBIT 254

Document No. OWE-443

Description of Document:

Intra-company Customer Competitive Information
Report

Date:

August 23, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was Tom Brown, Jr., Vice President, Marketing, Paper Products Division, Owens-Illinois Glass Company


Written by:

Sheldon Stearns, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company

Other Data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

The terms "\$13.00 base" and "\$9.55 base" mean the area charge or board level equivalent of \$13.00 and \$9.55, respectively, per 1,000 square feet for 200 pound test single wall container board.

Exhibit Text 

DEFENDANTS' EXHIBIT 255

Document No. OWE-446

Description of document:Intra-company Customer Competitive Information
Report**Date:**

August 3, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

Form PP 101

OWE-446

CUSTOMER COMPETITIVE INFORMATION

TO: Divisional Sales Manager, Toledo

c/o Mr. E. D. Boyd

/ Mr. H. H. McRae

FROM: (plant or branch) Atlanta PP0

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Gateway Luggage of Georgia, Inc., Information Supplies Co., Jackson, Georgia		Atlanta - Brinson		\$20,000 Information Received By Leon Hardeman	8/3/61
General Manager		If Business Lost Why?		Reported Competitors	
Description		Price Quoted By O.L.		Total Amount of Order	Competitors Price
		Verbal <input type="checkbox"/> Per Letter <input type="checkbox"/> Per <input type="checkbox"/>			
25 1/2 x 7-7/8 x 15 RSC Taped 175#	Price	150.00 (175# Test)	300.00	Inland Container	149.00 (200# Test)
31 x 17-5/8 x 24 RSC Taped 200#	Price	377.00	377.00	Inland Container	359.00

Remarks

Disposition

This is the second reduction given this account by Inland. We met the first reduction, but lost 44 boxes in the transaction. We are now meeting this reduction but we will again lose several thousand boxes.

As shown above, customer was given a 200# box for \$7.00H less than our price on 175# for the same box. This account bought about \$17,000 from us last year.

DEFENDANTS' EXHIBIT 256

Document No. OWE-451

Description of document:

Intra-company Customer Competitive Information Report

Date:

July 31, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company


Written by:

Mike Planer, then Salesman, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to K. E. Rosenbaum, then General Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

The term, "\$13.00 level" means the area charge or board level equivalent of \$13.00 per 1,000 square feet for 200 pound test single wall container board.

Exhibit Text 

CUSTOMER COMPETITIVE INFORMATION

OWE-451

For Divisional Sales Manager, Toledo

c/o E. D. Dodd - Toledo

H. H. McGee - Jacksonville

K. E. Rosenbaum - Salisbury

FROM (plant or branch) Salisbury - PPD

Customer <u>Pittsburgh Plate Glass Company, Shelby, N. C.</u>	Plant & Salesman <u>Salisbury - Planor</u>	Annual Potential <u>\$150,000</u>	Report Date <u>7-31-61</u>
Information Supplied By <u>Bill Miller</u>	Position <u>Purchasing Agent</u>	Information Received By <u>Mike Planor (Salesman)</u>	
	<input checked="" type="checkbox"/> Verbal <input type="checkbox"/> Per Letter Airtel	Reported Competitors	Competitors Price
	If Business Lost Why?	Total Amount of Order	
	Price Quoted By O. I.		
T-64 Die Cut Carton	\$13.00 level - \$25.00 Set Up	Union Bag	Approx. 40% under O-I

Remarks

This account has given us a major share of its business since the Shelby plant was opened. Union has never been a factor here before. This is the third large account Union has hit us in during the last month (other two: Amerotron, Southland Provision Co.). We will keep this business, we believe, by meeting the price.

Disposition

af 4. 256

DEFENDANTS' EXHIBIT 260

Document No. OWE-469

Description of document.

Intra-company Customer Competitive Information
Report

Date:

July 7, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Milton Jess, then Salesman; Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The phrase "base of \$9.50" and the term "\$8.15 base" mean the area charge or board level equivalent of \$9.50 and \$8.15, respectively, per 1,000 square feet for 200 pound test single wall container board.

694-7MC

CUSTOMER COMPETITIVE INFORMATION

FROM: (plant or branch) Atlanta

TC: Divisional Sales Manager, Toledo

Mr. E. D. Dodd

Mr. H. H. McRae.

Customer		Address & Location		Print & Salesman		Annual Potential		Ref. In Date	
Turnbull Cone Baking		Chattanooga, Tennessee		Atlanta - Jess		\$15,000		7/1/61	
Information Supplied By:		Position		Verbal <input checked="" type="checkbox"/> Per Letter <input type="checkbox"/> Atc "M"		Information Received By			
Dor Jones		Purchasing Agent		Hilton Jess					
Description		If Business Lost Why?		Price Quoted By O. L.		Total Amount of Order		Reported Competitors	
								Competitors Prices	
RSC 25 x 10 x 25-7/8 C 200// Tape 4PIC	Price			209.00	1570.00			Everyone in this area	192.00
RSC 24 x 9 1/4 x 25-3/8 C 200// Tape 4PIC	"			190.00	1500.00			quoted. At this time, we	181.00
RSC 24-3/4 x 9-7/8 x 27 1/2 C 200// Tape 4PIC	"			217.00	1100.00			do not know who received	200.00
RSC 17-1/8 x 11-3/8 x 23-7/8 C 200// Tape 4PIC	"			196.00	1000.00			the order.	176.00
RSC 24-3/4 x 9-7/8 x 27 1/2 C 200// Tape 4PIC	"			217.00	1100.00				200.00
RSC 16-3/8 x 10-7/8 x 20 1/2 C 200// Tape 4PIC	"			186.00	950.00				170.00
					6730.00				

Results


We had a blanket order for this customer's requirements during the first six months of this year. Requirements for the last six months were put out for bid in June and everyone took a shot at us.

We quoted our base of \$9.50 with a \$15.00 set up and were told the business want for the above prices which break down to about an \$8.15 base in our book.

4. Ex. 260

DEFENDANTS' EXHIBIT 265

Document No. OWE-484

Description of document:**Intra-company Customer Competitive Information Report****Date:****July 3, 1961****Addressed to:****Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company****Written by:****S. Stearns, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company****Other data:****Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.****Exhibit Text** 

Form PP 1017-2-61-100-1

JWE-484

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo

c/o Mr. E. O. Dodd

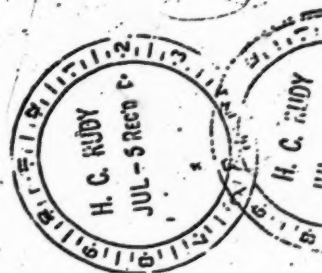
Mr. H. H. McGee

FROM: (Plant or branch) Atlanta

Customer Emerson S. Sessions Information Supplied By, C. H. Wood		Plant & Location Birmingham, Ala. Atlanta - Stearns		Annual Potential \$50,000 Information Received By S. Stearns		Report Date 7/3/61	
Purchasing Agent		<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Price Quoted By O.L.		Total Amount of Order	
Description		If Business Lost Why?		Price		Competitors Price	
ALL REQUIREMENTS						St. Joe St. Regis	

Remarks

Was submitted a report on 6/22 stating that account had been offered better prices and that we were quoting. Our new quota was approximately 10% off our original prices and we were told by account that we were still 10% high on some boxes and 15% high on others. Therefore, we gave a blanket order for the next year's business to St. Joe and St. Regis who quoted lower than us. We have done a great deal of design work for this account and have enjoyed good business without price playing much of a factor. However, with the price reductions being offered to this account by St. Joe, he felt we should let everyone quote and the results were disastrous.



44-235

DEFENDANTS' EXHIBIT 269

Document No. OWE-492

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President, and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Harold Frank, then General Manager, Atlanta,
Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President,
Owens-Illinois Glass Company, and General Manager,
Paper Products Division, Owens-Illinois Glass Com-
pany; and to H. H. McRae, then Southeastern
Regional Sales Manager, Paper Products Division,
Owens-Illinois Glass Company, and General Manager,
Jacksonville, Florida, Box Plant, Owens-Illinois Glass
Company.

JWE-192

TO: Divisional Sales Manager, Toledo
 c/o Mr. E. D. Dodd
 Mr. H. H. McGee

CUSTOMER COMPETITIVE INFORMATION

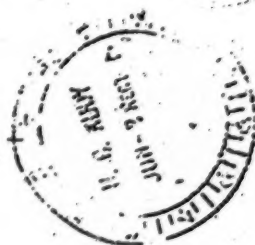
FRQs (plant or branch) Atlanta PPD

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Gateway Luggage of Georgia, Inc. Jackson, Georgia		Atlanta - Brinson		\$20,000	6/1/61
Information supplied by: Mr. Henry Clayman		<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Information Received By Harold Frank	
Description	If Business Lost Why?	Price Quoted By O.L.	Total Amount of Order	Reported Competitors	Competitors Price
25 1/2 x 7-7/8 x 14-7/8 RSC Taped 175#	Price	170.60	341.20	Inland Container	159.00
27-3/8 x 8 1/2 x 18-1/8 RSC Taped 200#	Price	223.05	223.05	Inland Container	210.00
17-3/8 x 15-7/8 x 25-7/8 RSC Taped 200#	Price	250.00	290.00	Inland Container	273.00

Remarks

Inland Container took an order for 44 boxes on three sizes from this account at the prices shown above. We have agreed to meet these prices and the customer assures us that we will receive future orders on these boxes. This account bought about \$17,000 from us last year.

Disposition



cl/ EL 269

DEFENDANTS' EXHIBIT 272

Document No. OWE-495

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Man-
ager, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Harold Frank, then General Manager, Atlanta,
Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President,
Owens-Illinois Glass Company, and General Manager,
Paper Products Division, Owens-Illinois Glass Com-
pany; and to H. H. McRae, then Southeastern
Regional Sales Manager, Paper Products Division,
Owens-Illinois Glass Company, and General Manager,
Jacksonville, Florida, Box Plant, Owens-Illinois Glass
Company.

OWE-195

CUSTOMER COMPETITIVE INFORMATION

To: Division Sales Manager, Toledo

c/o Mr. E. O. Dodd

Mr. H. H. Hodge

FROM (plant or branch) Atlanta PPD

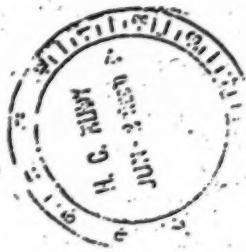
Customer Union Farm Mill Information Supplied By Mr. Henry Miller	Location Jacksonville, Alabama Position Purchasing Agent	Plant & Salesman Atlanta - Grodnar	Annual Estimated Information Received By Harold Frank	Report Date 6/1/61
Description 4 1/2 x 19 x 27 310L-Stitched 350# DM	If Business Lost Why?	Price Quoted By G. L. \$925.00	Total Amount of Order \$925.00	Reported Competitors St. Joe Paper
				Competitive Price \$773.00

Remarks

We were forced to lower our price at the beginning of the year from \$979.00 to \$560.00 to stay competitive. St. Joe and Southern Container offered to supply this box for \$925.00 which we had to meet to keep the business. Later, St. Joe submitted a price of \$802.00 which we intended to meet, but when we went back we had to meet St. Joe's price of \$773.00. It appears that it will go even lower.

This account purchased about \$35,000 from us in 1960.

Ch. 22.272



DEFENDANTS' EXHIBIT 273

Document No. OWE-496

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Mana-
ger, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Sheldon Stearns, then Salesman, Atlanta, Georgia,
Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice Presi-
dent, Owens-Illinois Glass Company, and General
Manager, Paper Products Division, Owens-Illinois
Glass Company; and to H. H. McRae, then South-
eastern Regional Sales Manager, Paper Products
Division, Owens-Illinois Glass Company, and General
Manager, Jacksonville, Florida, Box Plant, Owens-
Illinois Glass Company.

Exhibit Text

DEFENDANTS' EXHIBIT 274

Document No. OWE-497

Description of document:

Intra-company Customer Competitive Information
Report

Date:

June 1, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was
H. C. Rudy, Vice President and General Sales Mana-
ger, Paper Products Division, Owens-Illinois Glass
Company

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box
Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice Presi-
dent, Owens-Illinois Glass Company, and General
Manager, Paper Products Division, Owens-Illinois
Glass Company; and to H. H. McRae, then South-
eastern Regional Sales Manager, Paper Products
Division, Owens-Illinois Glass Company, and General
Manager, Jacksonville, Florida, Box Plant, Owens-
Illinois Glass Company.

Form 100-10 DWE-197

CUSTOMER COMPETITIVE INFORMATION

FROM (Name of branch) Atlanta PPD

To: Divisional Sales Manager, Toledo
 c/o Mr. E. D. Dodd
 Mr. H. H. McGee

Customer Simon & Hodgdon Information supplied by JERRY SIMON	Location Birmingham, Alabama Position Purchasing Agent	Plant & Salesman Atlanta - Grodnar <input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Airtel	Annual Potential \$45,000 Information Received by Paul Grodnar	Report Date 6/1/61
Description		If Business Lost Why?	Price Quoted By O.L.	Total Amount of Order
ALL ITEMS				
				Reported Competitors St. Joe Paper St. Regis Paper
				Competitors Price

Dispositions

Remarks

We were forced to reduce their prices 5% last month, now we are forced to reduce prices an additional 5% to maintain our position.

They gave token orders to St. Joe and St. Regis and threatened to cut us off if we didn't stay competitive.

del. 5.274



DEFENDANTS' EXHIBIT 280

Document No. OWE-511

Description of document:

Intra-company Customer Competitive Information Report

Date:

May 16, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company

Written by:

L. Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The term "\$10.00 base" means the area charge or board level equivalent of \$10.00 per 1,000 square feet for 200 pound test single wall container board.

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo ✓
 c/c Mr. E. D. Dodd
 Mr. H. H. McRae

FROM (plant or branch) Atlanta PPD

Customer Colonial Stores Information supplied by, Leland Glatrop		Location Atlanta, Georgia Position Assistant P. A.		Product & Selection Atlanta - Dream <input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Amount Potential \$50,000 Information Received By L. Hardman		Report Date 5/16/61	
Description		If Business Lost Why?		Price Quoted By O.L.		Total Amount of Order		Reported Competitors	
ALL TEA BOXES								Union Bag	
								Competitive Price	

Remarks
 Because of competitive prices in this account, we were forced to drop our box prices to a \$10.00 base on all Tea boxes.

We took a mixed order for 15H Tea boxes at our reduced prices. This will undoubtedly lead to reductions on other boxes.



DEFENDANTS' EXHIBIT 281

Document No. OWE-513

Description of document:

Intra-company correspondence

Date:

May 12, 1960

Addressed to:

M. H. Morgan, then Sales Service Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

Written by:

John Schwarz, then Salesman, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company

Other data:*

The initials "C.C.A." refer to the defendant Container Corporation of America.

Exhibit Text

*** Body of handwritten text is as follows:**

"Re: our recent conversation concerning C.C.A. price here. After seeing the quote & checking size, printing, board test, etc., I agreed to be competitive. The C.C.A. quote of 154.40 was dated 2/28/60 and signed by Mr. D. K. Newsome. Ready Picked deducted the difference from our invoice #33286. Would you please make the necessary arrangements for future invoicing at this figure? Thank you".

OVS-513

5/12

Attn: Mr. W. Morgan

Subj: Ready Picked Statue Co.
Plant City, Fla.

Re our recent conversation concerning the C.C.A. price here. After seeing the quote & checking size, printing, brand text, etc., I agreed to be competitive. The C.C.A. quote of 154.40 was dated 2/28/40, & signed by Mr. D.K. Newsum. Ready Picked deducted the difference from our invoice # 33286. Would you please make the necessary arrangements for future invoicing at this figure? Thank you.

J.S.

✓

46/3-01

DEFENDANTS' EXHIBIT 282

Document No. OWE-514

Description of document:

Intra-company Customer Competitive Information Report...

Date:

May 12, 1961

Addressed to:


Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Bernard Sirower, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text 

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. Moran

FROM: Field or Branch Atlanta PRO

Customer & Location		Plant & Salesman		Amount Potential		Report Date	
Filler Products Information Supplied By:		Atlanta, Georgia Production		Atlanta - Simpson		\$90,000	
Mr. Sam Filler		Vice Pres. & General Manager		<input checked="" type="checkbox"/> Verbally <input type="checkbox"/> Per Letter Attached		Information Received By	
Description		If Business Lost Why?		Price Quoted By C. L.		Total Amount of Order	
OVER ALL PRICE REDUCTION		Price		Reported Competitors		Competition Prices	
				Inland Container			

Remarks

This has been our account 100% for the past 9 to 10 years. In 1960 we sold them \$30,000. Inland Container reduced the prices from 5% to 10% on all their sizes, which we were forced to meet. We have seen these quotes officially in writing.

Because of Inland's low prices, customer feels obligated to give Inland a portion of their business. At present, percentage not determined.

6/24/62



DEFENDANTS' EXHIBIT 283

Document No. OWE-515

Description of document:**Intra-company Customer Competitive Information Report****Date:**

May 12, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

DEFENDANTS' EXHIBIT 285

Document No. OWE-520

Description of document:**Intra-company Customer Competitive Information Report****Date:****May 10, 1961****Addressed to:****Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Written by:****S. Stearns, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.****Other data:****Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.****Exhibit Text**

OWE-520

CUSTOMER COMPETITIVE INFORMATION

To: Division Sales Manager, Toledo ✓

By: E. D. Dodd

Mr. H. H. McKee

FROM (plant or branch) Atlanta P90

Customer Russell Manufacturing Co. Information Supplied By: Parry Urdham		Location Alexander City, Ala. Position Purchasing Agent		Plant & Salesman Atlanta - Stoarns Verbally <input type="checkbox"/> Per Letter Attached <input type="checkbox"/>		Amount Potential \$250,000 Information Received By S. Stoarns		Report Date 5/10/61	
Description	If Business Lost Why?	Price Quoted By O. L.	Total Amount of Order	Reported Competitors	Competitors Price				
ALL BUSINESS				Southern Container					

Remarks

Customer informed us that he had a reduction offer of 8% from Southern Container if he would split his business with them.

Customer bought \$60,000 from us last year and is a loyal account so we agreed to meet the 8% reduction. This may lead to an even greater reduction in the future because several companies want this account badly.



DEFENDANTS' EXHIBIT 286

Document No. OWE-521

Description of document:

Intra-company report

Date:

May 8, 1961

Addressed to:

H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

[None.]

Exhibit Text 13

OWE-521

REPORT FOR MARKETING MEETINGMAIL TO: H. H. McRae - SECOND MONDAY EACH MONTHPLANT: AtlantaFORECAST FOR MONTH: 11,245,000DATE: May 8, 1961PRESENT ESTIMATE: 11,500,000GENERAL CONDITIONS:

The Atlanta Plant continues to enjoy good business. People seem to be building up larger inventories but they are shopping for prices in every corner. We are having to reduce prices in a number of our major accounts to stay competitive and it appears the downward trend will continue.

Our Alabama customers report to us that they are being offered 15% and 20% reductions. St. Joe Paper seems to be the leader of this movement. We are holding our position wherever possible on these reductions.

Atlanta area prices continue to slide downward but not quite as drastic as Alabama.

ORDERS LOST

CUSTOMER	AMOUNT OF ORDER	LOST TO	REASON
Lee Bros. Foundry	1,200.00	Head	Price Reduction
Aluminum Chair Products	4,500.00	Unknown	Price Reduction
Production Engineering	5% price reduction on all business to meet competition		
Lamson & Sessions	\$5,000 price reduction on \$4,400.00 order to meet competition		
Russell Mfg. Co.	8% price reduction on all business to meet competition		

MAJOR ACCOUNTS ADDED

NONE

NEW DEVELOPMENTS OR ITEMS OF UNUSUAL INTEREST

NONE

4/8/286

DEFENDANTS' EXHIBIT 290

Document No. OWE-534

Description of document:

Intra-company Customer Competitive Information Report

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Milton Jess, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

OWE-534

TO: Divisional Sales Manager, Toledo
 c/o Mr. E. D. Dodd
 Mr. H. H. McRae

CUSTOMER COMPETITIVE INFORMATION

FROM: (Name or branch) Atlanta

Customer & Location		Plant & Salesman		Annual Potential	Report Date
Carolyn Chenilles Chattanooga, Tennessee		Atlanta - Joss		\$100,000	6/22/61
Information Supplied By:		Information Received by			
Mr. David Holovnick		Hilton Joss			
Description	If Business Lost Why?	Price Quoted By D.L.	Total Amount of Order	Reported Competitors	
				Competitors Price	
ALL OF THEIR CORRUGATED BUSINESS				Mangel Co. Union Bag	

Remarks

Both Mangel and Union keep lowering their prices once or twice a week, and have been for the past three weeks. We know we can't possibly make money running their business, but we don't want to give up our position due to the good volume.

For some unknown reason it appears that we have failed to report this account previously.



Ref EL 290

DEFENDANTS' EXHIBIT 291

Document No. OWE-536

Description of document:

Intra-company Customer Competitive Information Report.

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Paul Grodner, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Leon Hardeman, then Sales Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Exhibit Text

Form PP 16

OWE-536

To: Divisional Sales Manager, Toledo

c/o Mr. E. D. Dodd

Mr. H. H. McRae

CUSTOMER COMPETITIVE INFORMATION

From (name or branch) Atlanta

Customer Union Yarn Mills Information supplied by, Mr. Henry Miller	& Location Jacksonville, Alabama Vice President and General Manager	Plant & Salesman Atlanta - Goodhue	Annual Potential \$10,000 Information Received By Paul Grodnar & Leon Hardman	Report Date 6/22/61
Description		Price Quoted By C.L.	Total Amount of Order	Reported Competitors Competitors Price
Carload 4 1/2 x 19 x 27 3" O.L. 3500# DM		None Lost		Southern Containor St. Regis St. Joe

Remarks

We had to reduce our prices in this account three (3) times since 5/12/61.

Our original price was \$979.45. It was reduced to \$925 by Southern Containor. St. Regis came back a week to 10 days later at \$905. Now St. Joe came in at \$770, which we were forced to meet or lose out completely.

Customer has shown us formal quote on each occasion. Those reductions will cost us approximately \$0,000 to \$10,000 in total volume.

Ref. to 2-71



DEFENDANTS' EXHIBIT 293

Document No. OWE-538

Description of document:**Intra-company Customer Competitive
Information Report****Date:**

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Bernard Sirower, then Salesman, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company, and by Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

Form FPP 10- OWE-538

CUSTOMER COMPETITIVE INFORMATION

To: Divisional Sales Manager, Toledo
 By: Mr. E. W. Dodd
Mr. H. J. Miller

FROM: (plant or branch) Atlanta

Customer Name & Location <u>Fillar, Products, Inc.</u> <u>Atlanta, Georgia</u>		Plant & Salesman <u>Atlanta - Stronger</u>	Annual Potential <u>\$90,000</u>	Report Date <u>6/22/61</u>
Information Supplied By <u>Mr. J. J. Miller</u>		Verbal <input type="checkbox"/> Per Letter Attached <input checked="" type="checkbox"/>	Information Received By <u>Garnard Stronger & Harold Frank</u>	Competitors Price
Description <u>PRICE REDUCTION ON ALL THEIR BOXES</u>		If Business Lost Why? <u>Price</u>	Price Quoted By Q. L. <u>Inland Container</u>	Total Amount of Order

Remarks After reducing their prices twice in May, Inland received a minor share, 10% to 12%, of the business. Now they have further reduced their prices an additional 5% to get a larger percentage, but all it did was cause us to meet their prices. This account is now 12% to 15% less than it was in April.	Disposition
---	-------------



DEFENDANTS' EXHIBIT 295

Document No. OWE-540

Description of document:

Intra-company Customer Competitive
Information Report

Date:

June 22, 1961

Addressed to:

Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company; and to H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company.

The term "\$13.00 base" means the area charge or board level equivalent of \$13.00 per 1,000 square feet for 200 pound test, single wall container board.

Exhibit Text

CUSTOMER COMPETITIVE INFORMATION

OWE-54U

TO: Divisional Sales Manager, Toledo
c/c Mr. E. D. Dodd
J. C. Hall, Dallas

FROM: (plant or branch) Atlanta

Customer Gordon Foods Information supplied by, Mr. Marvin Hanby	Plant & Location Atlanta - Georgia Position Director of Purchases	Plant & Salesman Atlanta - House Verbelly <input type="checkbox"/> Per Letter Attn'd.	Annual Potential \$250,000 Information Received by Harold Frank	Report Date 6/22/61
Description PRICE REDUCTION ON ALL THEIR CORRUGATED REQUIREMENTS	If Business Lost Why? At present, no business lost. Maintained at lower prices.	Price Quoted By O.L. Total Amount of Order	Reported Competitors Gaylord Inland (See Below)	Competitors Price

Disposition

Remarks

Inland quoted on a \$13.00 base plus \$25.00 set-up less 15%.
Gaylord quoted on a similar price structure with 20% reduction.



DEFENDANTS' EXHIBIT 303

Document No. OWE-559

Description of document:

Intra-company correspondence

Date:

March 27, 1961

Addressed to:

E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

K. E. Rosenbaum, then General Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: H. C. Rudy, then Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company; H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to D. B. Brittain, then Sales Manager, Salisbury, North Carolina, Box Plant, Owens-Illinois Glass Company.

The terms "\$13.00 base" and "\$12.35 base" mean the area charge or board level equivalent of \$13.00 and \$12.35, respectively, per 1,000 square feet for 200 pound test single wall container board.

Form NC-113

OWENS-ILLINOIS
INTRA-COMPANY (1) CORRESPONDENCE
 March 27, 1961

Attention of Mr. E. D. Dodd - Toledo
 cc: Mr. H. C. Rudy - Toledo
 Mr. H. H. McKee - Jacksonville
 Subject Mr. D. S. Brittain

PAPER PRODUCTS DIVISION
 (Formerly National Container Corporation)
 KANSAS CITY PLANT

PRICES

We are very much concerned over the price trend in the area we serve. For the past several months prices have been declining steadily in most of the accounts we sell. In numerous major accounts box prices are from 15% to 25% off the \$13.00 base price. There does not seem to be any definite pattern in the price reductions as an account being sold on \$13.00 may be reduced 5% and another account on the \$12.35 base may be reduced 7%.


We are following the downward trend using as a guide information supplied us by our customers and salesmen. If the trend continues we cannot hope to operate at a profit in the months ahead.

K. E. Rosenbaum
 K. E. Rosenbaum

KER:ch

DEFENDANTS' EXHIBIT 311

Document No. OWE-608

Description of document:**Intra-company Customer Competitive
Information Report****Date:****November 26, 1960****Addressed to:****Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Written by:****W. E. Reagan, then Salesman, Memphis, Tennessee, Box Plant, Owens-Illinois Glass Company.****Other data:****Copy addressed to J. A. Cobb, then South Central Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company.****Exhibit Text** 

OWE-608

CUSTOMER COMPETITIVE INFORMATION

DIVISIONAL SALES MANAGER, TOLEDO
cc: Mr. J. A. Cobb, Reg. Div. Sales Manager

FROM: Memphis Plant

2/9/61

11/26/60

\$ 12,000.00

No. Main St., Memphis, Tenn.

Memphis - Reagan

W. E. Reagan

Gordon's Foods

Robert Cooney

Buyer

#3 Carton
#25 Tray
#25 Carton
#39 Carton
#39 Tray

Buyer said he had much lower price.
\$ 162.80M
192.40M
39.55M
181.70M
145.15M

St. Joe

\$1000.00

Bob Cooney said "St. Joe really had a low price."

Ref 6-311



DEFENDANTS' EXHIBIT 314

Document No. OWE-639

Description of document:

Intra-company Customer Competitive Information Report

Date:

February 28, 1961

Addressed to:


Divisional Sales Manager, Toledo, who then was H. C. Rudy, Vice President and General Sales Manager, Paper Products Division, Owens-Illinois Glass Company.

Written by:

Harold Frank, then General Manager, Atlanta, Georgia, Box Plant, Owens-Illinois Glass Company.

Other data:

Copies addressed to: H. H. McRae, then Southeastern Regional Sales Manager, Paper Products Division, Owens-Illinois Glass Company, and General Manager, Jacksonville, Florida, Box Plant, Owens-Illinois Glass Company; and to E. D. Dodd, then Vice President, Owens-Illinois Glass Company, and General Manager, Paper Products Division, Owens-Illinois Glass Company.

Exhibit Text 

OWE-639

CUSTOMER COMPLAINT INFORMATION

To: District Sales Manager, Toledo
c/o J.T. H. Co. 1000
St. Louis, Mo. 63103

FROM: (Please use branch) Atlanta, PPD

Customer Filler Products Carl Cohen	Location Atlanta, Georgia Position Purchasing Agent	Salesman Atlanta - Simpson X Verbal Per Letter And Tel	Annual Potential \$100,000 Information Received By Harold Frank	Report Date 2/2/61
Description 20-3/8 x 16-3/4 x 30 - 2000 St. tube Display with Gray wood grain outside liner.	It Business Unit Ship	Price Quoted By O.T.	Total Amount of Order \$582,000	Quoted Competitors Gaylord
				Competitors Price \$273.10

Remarks
To have sold this customer 500 orders for this item at our quoted price of \$582.00. On the third order Gaylord was allowed to quote and offered to sell this display to them for \$273.10.

We enjoy 100% of this accounts business and do not want any one else running boxes for them so we agreed to meet this extremely low price. We received the order for 500 displays at the lower price.

DEFENDANTS' EXHIBIT 341

Document No. SRP-85

Description of document:

Internal Memo

Date:

3/7/61

Addressed to:

S. B. Marks, General Manager, St. Regis, Atlanta

Written by:

M. Gilleland, Salesman, St. Regis, Atlanta

[Other data:]

None.]

Exhibit Text

* Typed copy of Exhibit Text appears at page 2 of Exhibit.

PHONE JANUARY 6-0000
TYPE AT-000SP-85
MEMO30 ELLIOTT ST. N.W.
ATLANTA 9, GA.

ATLANTA CONTAINER CORPORATION

TO: <i>M. S. B. Marks</i>	FROM: <i>W. H. E. E. E. E. E.</i>	DATE: <i>3/7/61</i>
SUBJECT: <i>Old Kent Healthy Growers</i>	COPY TO:	

Please quote in following items for subject company - Our prices were higher than competition. They showed me run down on prices and are giving below.

4 C - lots 10,000 -

actor to Container

CCIA

St Joe - Fayland

117.50

111.50

110.00

107.00 plus.

2 C - lots 10,000

78.00

76.30

75.00

74.00

1 C - lots 10,000

82.00

77.60

74.65

73.00

3 C - lots 10,000

Our price quoted

64.75 lots 10,000


1000 of these will last about 7 year.

Ref 4, 341

← 30 pi - →

DEFENDANT'S EXHIBIT 341

Continued

Continued Exhibit Text 

SRP - 85

M E M O

ATLANTA CONTAINER CORPORATION

TO: Mr. S. B. Marks

FROM: W.M. Gilleland

SUBJECT

COPY TO

DATE

Gold Kist Poultry Growers3/7/61

Please requote on following items for subject company - Our prices were higher than competition. They showed me run down on prices and am giving below -

4C - lots 10,000 -

Atlanta Container

CCA

St Jge

Gaylord

117.50

111.50

110.00

107.00 plus.

2C - lots 10,000

78.00

76.30

75.00

74.00

1C - lots 10,000

82.00

77.60

74.65

73.00

3C - lots 1000

Our price quoted

64.75 lots 2500

1000 of these will last about 1 year.

DEFENDANTS' EXHIBIT 342

U. S. v. Container Corporation et al.
Document No. SRP-98

Description of document:

Internal memo

Date:

June 20, 1961

Addressed to:

G. D. Robinson, Div. General Sales Manager, St.
Regis, Atlanta.

Written by:

S. B. Marks, General Manager, St. Regis, Atlanta.

Other data:

W. L. Diggs, Division Manager.

Form 10-20-55 100 1-55 Printed in USA 100

1 PP-98

INTER-COMPANY CORRESPONDENCE

FROM Sydney B. Marks

LOCATION

Atlas's Container Division

DATE

June 20, 1961

TO

Mr. G. D. Robinson
St. Regis Paper Co.
4600 Brookpark Road
Cleveland 34, Ohio

cc: W. L. Diggs

Subject: Carolyn Chenille, Chattanooga, Tenn.

Dear Mr. Robinson:

We were selling this account 90% of their requirements with sales last year amounting to \$75,000.

They operate plants at Dalton, Ringgold, Ga., Sweetwater, Tenn., and Saluda, S. C.

Our selling price has been 3% off the \$13.00 level plus charges on the Georgia Manual.

About October of last year Ohio-Illinois and Mengel cut the price approximately \$1.00 to \$2.00 per M Sq. Ft. This price remained until about six weeks ago and was cut again by Mengel, Union and Inland. The current level is now close to the \$10.00 base.

In every instance when price is cut he gives them an order and the customer then forward to me the original quotation or acknowledgement of this order showing the new low price for us to meet or reject.

Very truly yours,

Sydney B. Marks

SBM:hp

DEFENDANTS' EXHIBIT 346

Document No. SRP-120

Description of document:

Salesman's Report of Interview

Date:

June 28, 1961

Addressed to:Pete Petree (J. W. Petree), Sales Manager, St. Regis,
Jacksonville**Written by:**Daniel (P. A. Daniel), St. Regis Sales Representative,
St. Regis, Jacksonville**Other data:***Initials "dg" are Mrs. Dot Green, former secretary,
St. Regis, JacksonvilleNote (crossed out): "12.35 less 9%
total set up = \$316.70".**Exhibit Text**

* Typed copy of Exhibit Text appears at page 2 of Exhibit.

SR

ST. REGIS PAPER COMPANY

CONTAINER DIVISION

Jacksonville, Florida

PAPER CO.

CONTAINER DIVISION

CHECK HERE FOR
URGENT ACTION

2

FIRM NAME Wagener Mfg. Co. SKP-170 JUN 30 1964 6/22/64
 ADDRESS Wagener, S.C.
 PERSON INTERVIEWED Howard Baunstein TITLE P/A TYPE OF BUSINESS Textile
 REPORTED BY Daniel
 REPORT TO Pete Petree DEPARTMENT

Union Bag ~~put~~ put some new prices in Wagener 6/22/64. We weren't out so bad on the small sizes but on the large were way high again. Howard changed me this quotation & on their #54 LF one price was \$346.40 & Union Bag was \$316.55. Howard said when prices settle back down we will get some business from them & he also said I was the only one he would let see Union's price quote. Our prices were all good until U.B. came in last evening.

12.35

less 970


told it up 1316.70

REQUESTED
DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 346**Continued****Continued Exhibit Text** 

SRF-120

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☒

RM Name	Wagener Mfg. Co.	Date	6/28/61
Address	Wagener, S.C.		
Person Interviewed	Howard Braunstein	Title	P/A
		Type of Business	Textile
		Reported By	Daniel
Report To	Pete Petree	Department	

Union Bag put some new prices in Wagener 6/27/61. We weren't cut so bad on the small sizes but on the large we are way high again. Howard showed me their quotation & on their #54 LF our price was \$346.40 & Union Bag was \$316.55. Howard said when prices settle back down we will get some business from them & he also said I was the only one he would let see Union's price quotations. Our prices were all good until U.B. came in last evening.

Ref. R. 346-23

DEFENDANTS' EXHIBIT 354

Document No. SRP-132

Description of document:**Salesman's Report of Interview****Date:****June 27, 1960****Addressed to:****W. L. Diggs, General Manager, St. Regis, Jacksonville****Written by:****Gene Platt, Sales Representative, St. Regis, Jacksonville****Other data:*****Initials "JWP" are J. W. Petree, Sales Manager;****Page 2—Initials "DH" are Don Huntley, Sales Service Manager;****Page 2—Initials "WLD" are W. L. Diggs, General Manager; all St. Regis, Jacksonville****Page 2—Photograph is International Paper truck backed up at Rosenthalt Packing Shed.****Exhibit Text**

*** Typed copy of Exhibit Text appears at page 3 of Exhibit.**

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☒FLEXIBLE PACKAGING DIV. ☐CHECK HERE FOR
URGENT ACTION ☐

GROY IRS CONTAINER COR. ORATION

FIRM NAME Rosenthalt Packing Shed

SPC-132

DATE 6/27/60

ONES Lt Pleasant, S.C.

PERSON INTERVIEWED Mr Aaron Rosenthalt

TITLE Owner

TYPE OF BUSINESS (Tomato) Produce

REPORTED BY Gene Platt

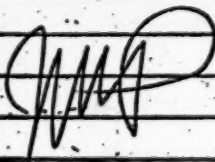
REPORT TO Mr W.L. Dicks

DEPARTMENT Sales

At the start of the tomato season I contacted the above ~~XXXXXX~~ prospect with the intentions of selling him corr. shipping cartons for the tomatoes to be sent north.

Picked up a Sample Carton that he used the previous season furnished by International Paper Co. Heagtown, A.C. The combination of board used was 47-42-47, the selling price was \$34.77 in truck load orders. I talked to Brad James, our Sales Service mgr. was told to meet price. Mr Rosenthalt informed me that he would share this business with St. Regis, check next few days for orders. When I checked back I was informed that SP had reduced their price to 338.70 per M, I asked Mr Rosenthalt if this was a stock box or Printed Carton to his spec's. I was informed that this was the same printed Carton, 2 pl. 2 col. I checked again with Mr James & again was told to meet price with same board combination not the sample of 47-47-69. Again Mr Rosenthalt stated that both Quad & SP made a statement that they would do better if forced to. I pushed this issue hard to see what the

DO NOT USE THIS SPACE



ORIGINAL

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☐FLEXIBLE PACKAGING DIV. ☐SRP-132
CHECK HERE FOR
URGENT ACTION ☐

GROVEERS CONTAINER CORPORATION

FROM

DATE

PERSON
INTERVIEWED

TITLE

TYPE OF
BUSINESSREPORTED
BYREPORT
TO

DEPARTMENT

better price & other benefits would be.
I was told by Mr. Rosenthal that he was under
the opinion the price would be 337.40 per M &
a trailer would be backed up to his shed & left
here to be unloaded as needed, every two or
3 days I would bring in a new load & take
away the empty trailer. I discussed this with
Mr. Wiggs & he stated we would not be
interested in this type of selling at this time
enclosed photo of trailer Backed at Rosenthal
shed, Mt. Pleasant, A.C.

I did the best I could with this account.
will be glad to try again next season.

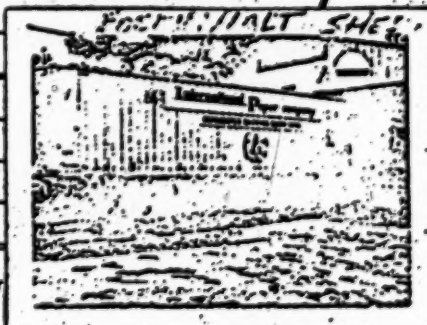
- Here -

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DEPOSITION

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FORM 1-55 USE 1955

SALESMAN'S REPORT



SRP-132

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

NAME	Rosenthalt Packing Shed		Date	6/27/60
Address	Mt. Pleasant, S.C.			
Person Interviewed	Mr. Aaron Rosenthalt	Title	Owner	Type of Business (Tomato) Produce
Report To	Mr. W.L. Diggs	Department	Sales	Reported By Gene Platt

At the start of the tomato season I contacted the above prospect with the intentions of selling him corr. shipping cartons for the tomatoes to be sent north. Picked up a sample carton that he used the previous season furnished by International Paper Co., Georgetown, S.C. The combination of board used was 47-42-47, the selling price was \$346.77 M in Truck load orders. I talked to Brad James, our sales service mgr. Was told to meet price. Mr. Rosenthalt informed me that he would share this business with St. Regis, check next few days for order, when I checked back I was informed that IP had reduced their price to 338.70 Per M. I asked Mr. Rosenthalt if this was a stock box or Printed Carton to his spec's. I was informed that this was the same printed carton. 2 Pal. 2 col. I checked again with Mr. James & again was told to meet price with same board. Combination not the sample of 47-47-69, again Mr. Rosenthalt stated that both Mead and IP made a statement that they would do better if forced to. I pushed this issue hard to see what the better price & other benefits would be. I was told by Mr. Rosenthalt that he was under the opinion the price would be 337.40 per M & a trailer would be backed up to his shed and left here to be unloaded as needed, every two or 3 days IP would bring a new load & take away the empty trailer, I discussed this with Mr. Diggs & he stated we would not be interested in this type of selling at this time, enclosed photo of trailer Parked at Rosenthalt shed, Mt. Pleasant, S.C.

I did the best I could with this account, will be glad to try again next season.

Gene -

DEFENDANTS' EXHIBIT 355

Document No. SRP-143

Description of document:

Salesman's Report of Interview

Date:

September 5, 1961

Addressed to:


J. W. Petree, Sales Manager, St. Regis, Jacksonville

Written by:

C. E. Newcomer, Sales Representative, St. Regis,
Jacksonville

Other data:*

Initials "DH" are Don Huntley, Sales Service Manager; Initials "JWP" are J. W. Petree, Sales Manager; both St. Regis, Jacksonville.

Exhibit Text 

* Typed copy of Exhibit Text appears at page 2 of Exhibit.



ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

CRP-143

CHECK HERE FOR
URGENT ACTION ☐

FIRM NAME GOLD HEST PECAN CROWNS DATE 9-5-61

ADDRESS 605 Church St. Waycross, Ga.

PERSON INTERVIEWED Carl O'Neal TITLE mgr. TYPE OF BUSINESS Pean

REPORTED BY Quinton

REPORT TO J. W. Petre DEPARTMENT

Carl called me today (Did not answer charges) and ask for quote on 20m 24-16 cells AND 6m 24-16. CCA + Gaylord. These are the items that he did not put out for bid last year in order for me to get the business, but he is having to request quotes this year from CCA + Gaylord.

Carl informed me that he received ^{partial} requests from Union Bag last Friday - 9-1-61, on the 35m 30th sheet paper that he has already given the contract to CCA, and Union Price was approx \$15.00 per m less than the quote that we submitted. He also said that Gaylord was below us, but did not say how much.

REQUESTED
DISPOSITION


DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 355

Continued

Continued Exhibit Text 

SRP-143

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

Firm Name	Gold Kist Pecan Growers		Date	9-5-61	
Address 605 Church St. Waycross, Ga.					
Person Interviewed	Carl O'Neal	Title	Mgr.	Type of Business	Pecan
				Reported By	Newcomer
Report To	J. W. Petres		Department		

Carl called me today (Did not reverse charges) and ask for quotes on 20m 24-1b cello and 6m 24-1b. Cello Tray Pak Boxes. These are the items that his did not put out for bid last year in order for me to get the business, but he is having to request quotes this year from CCA & Gaylord.

Carl informs me that he received a verbal quote from Union Bag last Friday - 9-1-61 on the 35m 30# meat boxes that he has already given the contract to CCA, and Unions price was app. \$15.00 per m less than the quote that we submitted. He also said that Gaylord was below us, but did not say how much.

DEFENDANTS' EXHIBIT 358*U. S. v. Container Corporation et al.***Document No. SRP-151****Description of document:****Salesman's Report of Interview****Date:****December 2, 1960****Addressed to:****Mr. W. L. Diggs, General Manager, St. Regis, Jacksonville****Written by:****Gene Platt, Sales Representative, St. Regis, Jacksonville****Other data:****Note at bottom, written by W. L. Diggs, General Manager, St. Regis, Jacksonville, reads as follows:****"Refer estimates 33/26/33 Body Double Wall
42/42 Cover Single Wall****12.35 + 25.00****(Less 10%****(After Setup"****Exhibit Text**

JACKSONVILLE
DIVISION

SRP-151

CORRUPTING DIV. ☒

FLEXIBLE PACK

NO DIV. ☐CHECK HERE FOR
URGENT ACTION ☐

GROV. LRS CONTAINER CORPORATION

FIRM
NAME

Cook & Company, Inc.

DATE 12/2/60

ADDRESS

Hazlehurst, Ga.

PERSON
INTERVIEWED

Mr Wade Thornton

TITLE

Gen. Mgr

TYPE OF
BUSINESS

Tile

REPORTED BY Gene Platt

REPORT TO Mr W.L. Digge

DEPARTMENT

Sales

Made call on above customer today to adjust quotes previously submitted. Mr Thornton made this statement "of all the companies calling on me, I would like to do business with St. Regis Paper Company over all, I cannot do this unless the price is the same or lower as this is my instructions from Headquarters". I assured Mr Thornton that we would do everything possible to meet the prices but I would like to see these prices, with this Mr Thornton pulled out of his file his last invoice, dated Nov. 8, 1960, Union Bag, this price he showed me was for 5H Tel. Body, 47 3/4 X 23 3/4 X 12 Double W all 33/26/33, "C" flute, 200 test. \$556.30 per M. our previous quote was \$ 475.75 for single wall, Union bag \$54.00 under our quote on double wall, also \$54.00 under our price on single wall, if you will review this and we can meet this price it without a possible doubt that we will get this business, please believe me this is not just talk but a definite commitment from Mr Thornton that we to get this business, enclosed request for quote. please advise.

Gene

RECEIVED
EXPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

Jef. E. 358

DEFENDANTS' EXHIBIT 362

Document No. SRP-162

Description of document:**Salesman's Report of Interview****Date:****February 3, 1962****Addressed to:****J. W. Petree, Sales Manager, St. Regis, Jacksonville****Written by:****W. H. Dresback, Sales Representative, St. Regis, Jacksonville****Other data:****Initial "P" is J. W. Petree, Sales Manager; Initials "jh" are Mrs. Jean Harris, Secretary; both St. Regis, Jacksonville.****Note reads: "Get files & Return to me."**

ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

STP-162

CHECK HERE FOR
URGENT ACTION ☐

General Electric Co.

ST. REGIS PAPER CO.
CONTAINER DIVISION

DATE 2/3/62

Hendersonville, N. C.

FEB 3 1962

J. P. Wright

TYPE OF
BUSINESSREPORTED
BY

Dresbeck

J. W. Petree

DEPARTMENT

The above company has received four quotations from us in the last two months and we have been exceptionally high on everyone. I sent you a report dated 1/10/62 stating our quote of 12/30 was 15% high on the base and 32% high on the SU. Along with this report was a request for quotation. The quote was made and we were still approximately the same percentage out of line, our quotation dated 1/16/62, it was for 3000 cartons per week. Had we been competitive on this bid, I think customer might have sampled pressed and possibly given us the business if it worked out. They will be asking for bids on this particular carton again in April, has already placed this order. The next two quotations, 1/27 and 1/19 wa. a also as much out of line. Please review your pricing on this account so the next time we get a request for quotation, we might be in line. Customer says he would like to do some business with us, the is a \$225,000.00 account. His present suppliers are Gay, TC, DR and Container. Attached are copies of the above mentioned quotations. If you have any questions, please adv

RECEIVED

DO NOT WRITE IN THESE SPACES

CALLED FOR REPORT OF INTERVIEW

ORIGINAL

DEFENDANTS' EXHIBIT 363

Document No. SRP-163

Description of document:**Salesman's Report of Interview****Date:****December 19, 1961****Addressed to:****J. W. Petree, Sales Manager, St. Regis, Jacksonville****Written by:****P. A. Daniel, Sales Representative, St. Regis, Jacksonville.****Other data:*****Initials "JWP" are J. W. Petree. Lined-over note reads: "Get files and return to Petree"****Other note reads: "Requote at 13.60 + 25.00 12-28-61"****Exhibit Text**

*** Typed copy of Exhibit Text appears at page 2 of Exhibit.**

(SR)

ST. REGIS PAPER COMPANY
CONTAINER DIVISION
Jacksonville, Florida

SRP-163

CHECK HERE FOR
URGENT ACTION ☐

FIRM NAME Edmont Mfg. Co. REGIS No. 100 DATE 12/18/61
 ADDRESS Chickamauga, S.C. INTERVIEWED Nov 22 1961 TYPE OF BUSINESS Textile
 PERSON INTERVIEWED Ken H. H. on TITLE _____ REPORTED BY Daniel
 REPORT TO Pete Petree DEPARTMENT _____

Our quotation of Nov. 7th was competitive until Weyerhaeuser & Mead quotation. Weyerhaeuser is about \$5.00 per ft cheaper than we are down the line. I saw Mead quote & they really cut the price. On #2's our price \$178.75, Mead \$168.00 on #3's our price \$202.35, Mead \$186.40. on #4's our price \$251.75, Mead \$231.35. On #8 our price \$375.30, Mead is \$343.75. Needless to say he is now buying from Mead, Durham, N.C. Their quote was dated in Nov. & the salesman is (name lost), I couldn't see the rest of the quotation.

REQUESTED
DISPOSITION

DO NOT USE THIS SPACE

SALES AND SERVICE DEPT. OF INTERVIEW

ORIGINAL

396

DEFENDANT'S EXHIBIT 363

Continued

Continued Exhibit Text

SRP-163

ST. REGIS PAPER COMPANY
Container Division
Jacksonville, Florida

Check Here For
Urgent Action ☐

Arm and	Egmont Mfg. Co.	Date	12/19/61
Address	Cheraw, S.C.		
Person Interviewed	Ken Meffner	Title	Type of Business Textile
			Reported By Daniel
Report To	Pete Petres	Department	

Our quotation of Nov. 7th was competitive until Weyer. & Mead quoted. Weyer is about \$5.00 per M cheaper than we are down the line. I saw Mead's quote & they really cut the prices. On #2 1/2 our price \$178.75, Mead \$164.00 on # 3 1/2 our price \$202.35, Mead \$186.40, on # 4 1/2 our price \$251.75, Mead \$231.35, on #8 our price \$375.35. Mead is \$343.75. Needless to say he is now buying from Mead, Durham, N.C. Their quote was dated in Nov. & the Salesman is Crane, I couldn't see the rest of the quotation.

DEFENDANTS' EXHIBIT 365

Document No. SRP-179

Description of document:

Salesman's Report of Interview

Date:

August 12, 1960

Addressed to:

W. L. Diggs, General Manager, St. Regis, Jacksonville

Written by:J. W. Petree, Sales Representative, St. Regis,
Jacksonville**Other data:**

Initials "WLD" are W. L. Diggs, General Manager;
Initials "DH" are Don Huntley, Sales Service Man-
ager; Initials "DG" are Mrs. Dot Green, Secretary;
Initials "WLD" are W. L. Diggs, General Manager;
all St. Regis, Jacksonville. Note reads: "Quote 12.35-
25.00"

JACKSONVILLE DIVISION ☒ CORRUGATING DIV. ☒ FLEXIBLE PACKAGING DIV. ☐ CHECK HERE FOR URGENT ACTION ☐

GROV ERS CONTAINER COF ORATION

FILE NO. *SRP-179* ST. REGIS PAPER CO. DATE 8-12-60

ADDRESS *Columbia, S. C.* CONTAINER DIVISION

PERSON INTERVIEWED *Mr. Adams* TITLE *P. A.* AUG 16 1960 TYPE OF BUSINESS Textile

REPORTED BY *Petree*

REPORT *Bill Diggs* DEPARTMENT *Sales Mgr.*

Buyer said Union Bag took the contract. They were between 10 & 20% under everyone. Said our price was not the highest but we were in the middle. The contract runs for 6 months. He will give us an opportunity to quote on the next go around.

Pete

*Quoted
12.25 - 25.00*

REQUESTED DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

clp 46.365
ORIGINAL

DEFENDANTS' EXHIBIT 369

Document No. SRP-205A

Description of document:

Internal Memo

Date:

October 3, 1960

Addressed to:

W. L. Diggs, General Manager, St. Regis, Jacksonville

Written by:J. W. Petree, Sales Representative, St. Regis,
Jacksonville.**Other data:**

"Bill D." at top of report is W. L. Diggs. D. Huntley is Don Huntley, Sales Service Manager, St. Regis, Jacksonville.

Note at top reads: "Huntley Refer price cards to Bill D. Sales Service D. Huntley"

Note at bottom reads: "10/14/1960 Because of the very small volume we will not reduce our prices. 10/14/1960"

Exhibit Text

INTER-OFFICE CORRESPONDENCE

Bill Dicks
From Pete Petros

ST. REGIS PAPER CO.
CONTAINER DIVISION

Location

Location

Subject Enclsior Underwear OCT 5 1960
Saluda, S. C.

Date 10-3-60

I talked with the buyer from above company today and he gave me the following info on prices. Buyer said the last time Union Rep was in, he did not see him but a few days later he got new and lower prices. He also got new prices from Dixie Container.

Box number	Dixie Container 1,000 lot	Union Bag Base plus set up
6 S	\$ 144.05	\$ 124.45 plus 25.00
8 S	174.50	160.55
12 S	217.55	191.45
20 S		290.70
21 S	324.40	297.15
24 S	346.15	315.35
36-2	443.20	402.20
48 S		570.60
36-3		606.50

Buyer had told me he would not buy until Nov. or Dec. so I see no reason to get too excited about it, but I feel we should take some stand on it. I told him at times these boys would put prices in for a 15 or 30 day period and if he placed the order with them they would probably return it or charge the higher price. I don't understand this. If Union got all of it they would buy more than \$10,000 per year, and these prices are completely out of reason. Please note that Unions quote was dated Oct 1, 1960 and Dixie Container was dated Sept 27, 1960. The buyer gave me this by phone so it didn't do them any good to cut the price. They didn't get an order.

10/14/1960

Because of the increase in
volume we will have to raise
our prices 10/14/1960

4/4 369

DEFENDANTS' EXHIBIT 371

Document No. SRP-213B

Description of document:**Salesman's Report of Interview****Date:****January 25, 1960****Addressed to:****Brad James, Sales Service Manager, St. Regis,
Jacksonville****Written by:****J. W. Petree, Sales Representative, St. Regis,
Jacksonville****Other data:****Initials "BJ" are Brad James, Sales Service Manager,
St. Regis, Jacksonville. Note reads "handled"****Exhibit Text**

JACKSONVILLE
DIVISIONCORRUGATING DIV. ☒FLEXIBLE PACKAGING DIV. ☐

GROWERS CONTAINER CORP. RATION

CHECK HERE FOR
URGENT ACTION ☐FIRM NAME Gillis Coleman Co. SRP-213B JAN 27 1960 DATE JAN. 25, 1960ADDRESS Columbia, S. C.

712/101111-111111

PERSON INTERVIEWED Gillis ColemanTITLE OwnerTYPE OF BUSINESS ProduceREPORTED BY PetresREPORT TO Brad, JamesDEPARTMENT Sales Service

Buyer gave an order to Carolina Container due to price. Carter Holbrook flew down here and told him they had lost \$ 30,000 volume in this account last year. He also told buyer that they had analyzed one of our cartons and we were not giving him weather proof adhesive. I had no comment because in the beginning he had told me that our quality had slipped on the last two orders plus the fact he felt sorry for Carter and wanted to help him. This does not mean that we are out here but we have to really make him some good cartons to get back in the running. I sent you one of Carolina's Cartons for you to look at. It looks like Jute to me. Their price was \$ 191.25 Per M and a \$ 4.20 of this was weather proof adhesive. We have another problem here Union Bag made some 20lb cartons for him and they were real good. They had weather proof adhesive and were less than other people without weather proof starch. They gave him a price of \$ 194.00 Per M on 40lb cartons to include weather proof adhesive. Of course you realize our price is \$198.75 with the weather proof starch. Please advise.

Pete

RECORDED
DISPOSITION

DO NOT USE THIS SPACE

SALESMAN'S REPORT OF INTERVIEW

ORIGINAL

67 2 371

DEFENDANTS' EXHIBIT 378

Document No. UC-9

Description of document:

Letter

Date:

January 6, 1961

Addressed to:

Union Bag Camp Paper Co.

Written by:

J. H. Leverette, Purchasing Agent, Southern Plants,
The American Thread Company

Other data:

Handwritten Note:

Mike Murrill, Jamestown Salesman

Exhibit Text

UC-9

The American Thread Company

(INCORPORATED)
SEVIER, NORTH CAROLINA
(MAILING ADDRESS - P. O. BOX 340, MARION, N. C.)
TELEPHONE - MARION 2181

January 6, 1961

Union Bag-Camp Paper Co.
P. O. Box 1965
Spartanburg, S. C.

Gentlemen:

We have had a proposal made to us by one of the large producers of corrugated on a guaranteed price basis for one year at an overall cost of $5\frac{1}{2}\%$ below your current prices.


Due to current profit picture we will take advantage of this offer unless you are able to make the necessary price adjustments to meet this guaranteed price.

An early reply advising your intentions is requested.

Very truly yours,

J. H. Hewitt
J. H. HEWITT
Purchasing Agent
Southern Plants

JHL:mf

Witte: Have all prices for this account reduced $5\frac{1}{2}\%$. Ask Mike if he wants quote sent to him or direct to customer. Check to see if we send copy to Trenton office, Tarleton Salesman etc. When sending Mike the quote or his copy, ask him to check all of the items and not  kind which are inactive.

SPINNERS AND MANUFACTURERS OF THREADS AND YARNS MADE FROM COTTON, WOOL, NYLON AND OTHER SYNTHETIC FIBERS

Ref. E. 378

DEFENDANTS' EXHIBIT 399

U. S. v. Container Corporation et al.
Document No. UC-48

Description of document:

Memorandum

Date:

Feb. 12, 1960

Addressed to:

(K. H.) Payne, Jamestown Service Mgr.

Written by:

(R. H.) Tedder, Jamestown Salesman.

Other data:*

Mentioned in text:—Mr. Svitak, Purchasing Representative, Kerns Bakery.

Exhibit Text

*** Handwritten body of text is as follows:**

"Ken,

Please, quote attached; and may I remind you that it is strictly price, also quoting are H&D—Dixie—Richmond—and I think Cont. Can & Carolina.

Mr. Svitak has most of the quotes and he told me that they were not consistent at all. He said from the quotes one carton ran from 129.00 per M to 172.00 per M".

HIGHLAND CONTAINER COMPANY

4C-48

Office to Ken Office Date 7-6-10-60
 Subject Ken's Report Attention of _____

Ken,

Please Note Attached, and may I
 Remind you That it is Strictly for
 also Quoting as H&D - Dixie - Richmond
 and I Think Cont. Can & Carolina.

MR. SUTAK has most of The Quotes and
 he Told me That They were not consistant
 at all. He said That The Quotes our Carter
 Ran from 179⁰⁰ per m To 172⁰⁰ per m.

Re figure 2200 for 4/1/60
 1500 54

Return to me

Thanks,
 Bob

Ref. 4 399

DEFENDANTS' EXHIBIT 400

Document No. UC-50

Description of Document:

Handwritten note (accompanies #UC-51)

Date:

Feb. 17, 1961

Addressed to:

[None.]

Written by:

Bob (Markham)—Account Mgr, Jamestown

Other data:**Mentioned in text:**

Mr. Braak—Purchasing Representative
North Carolina Cooperative Bulb
Growers Association

Exhibit Text

UC-50

2/17/61

N.C. Cooperative Bull. Service

Mr. Braak said

Head was
 exactly \$10.00 under
 us on quoted 1/3/61.

Rob

Ref. Ex. 400

← 30 for 3-10

DEFENDANTS' EXHIBIT 402

Document No. UC-59 & 60

Description of Document:

Memorandum

Date:

Feb. 21, 1961

Addressed to:

F. E. Kneip, General Sales Manager, New York

CC:

L. A. Wulff, Asst. General Sales Mgr, New York

J. I. Pritchett, Regional Sales Mgr, Savannah

Written by:

F. B. Grimes, Spartanburg, Sales Mgr.

Other data:

[None.]

Exhibit Text 13

UC-59

Mr. F. E. Kneip

New York

Price Changes During December
1960 and January 1961

F. B. Crimms

Spartanburg

February 21, 1961

cc: Mr. L. A. Wulff, New York
Mr. J. I. Pritchett, Savannah

We failed to send you subject report for December and January and we are, therefore, combining the two months on this one report.


January - 1961

<u>Customer</u>	<u>Address</u>	<u>Explanation</u>
Rigolow-Sanford Carpet Co., New York, NY (For all mills in Spartanburg's territory.)		From \$12.35 + \$25.00 to \$12.35 + \$25.00 less 5%. Not offer made by unnamed competition.
Dover Mill Co.	Shelby, N. C.	Prices reduced 3%. As yet we have been unable to determine who cut this level gain.
Cleveland Table Co.	Selma, Ala.	From \$12.35 + \$25.00 less 3% to \$12.35 + \$15.00 less 10%. St. Joe Paper Company, reduced prices in this account the latter part of 1960. We reduced to regain our position.
Beaunit Mills	Fountain Inn, S.C.	Prices on certain items reduced 1% to meet prices of Owens-Illinois, Salisbury, N.C.
Belton Co.	Belton, S. C.	Reduction of 1% given to meet offer of Gaylord Container Co., Greenville, S. C.
Hicks Produce Co.	Johnson City, Tenn.	Price on this account's volume item reduced 10% to meet offer of Mengel Co., Knoxville, Tenn.
Noely Produce Co.	Knoxville, Tenn.	5% price reduction given to meet offer by Tri-State Container, Elizabethton, Tenn.
Riegel Textile Corp.	Johnston, S.C.	Prices reduced 7% to meet price cuts by Dixie Container, Richmond, Va., and Gaylord Container, Greenville, S. C.

4/4 412-1

DEFENDANTS' EXHIBIT 402

Continued

Continued Exhibit Text 

413 UC-60

(413)

F. E. K.
2/21/61
#2

December - 1960

American Throdd Co.

Marion, N. C.

Prices reduced 5-1/2% to retain business. Customer claimed they had this offer from another source.

Sealtent Foods

Charlotte, N. C.

St. Joe Paper Co., St. Joe, Ind., cut the level from \$13.75 to \$13.00.

Welico Shoe Co.

Waynesville, N.C.

From \$13.00 + \$15.00 to \$13.00 + \$15.00 less 5%. Became competitive in this account.

JMG/mve

Frank D. Grimes

DEFENDANTS' EXHIBIT 406

Document No. UC-70

Description of Document:

Letter

Date:

March 1, 1961

Addressed to:

Budyed Yarns, Inc.

Written by:

J. H. Goodman, Spartanburg Service Mgr.

Other data:**Notes:**

Frank B. Grimes, Spartanburg Sales Mgr.

Pat (H. C.) Fodrie—Salesman, Spartanburg

Mr. John Harvey, Purchasing Representative

Budyed Yarns Inc.

Exhibit Text 137

THIS WAS LEFT OUT OF LAST ORDER

UC-70

MAIL

Post

March 1, 1961

Budyed Yarns, Inc.
York, South Carolina

F. O. O. Spartanburg- Freight
Allowed to York, S. C.

These prices effective March 1, 1961,
and subject to revision April 15, 1961,
and monthly thereafter.

1000 80-C SRSC 30 24 28 2751A STO 3PIC 7315 \$774.75
3" o'lap T & B 69-69

3/30/61

FRANK B. GRIMES:

MEAD-ATLANTA HAS REALLY "BUSTED" THE ABOVE COMPANY.
MR. JOHN HARVEY SHOWED ME A COPY OF MEAD'S
ORDER # 04423, DATED 3/6/61 FOR 1 m

80-C CTNS 30 X 24 X 28 2751A TEST PRICE \$741.07/m
(CALLING FOR DFL 3/20/61)

THEY ALSO CHANGED PRINTING FROM 3PIC TO 3T2C
AND PURCHASED THE DIES WHICH CAME TO AROUND \$163.00

THIS PARTICULAR ACCOUNT IS NOT WORTH A GREAT DEAL
ANNUALLY, BUT THIS INFO MAY BE HELPFUL ELSEWHERE

kk

APR 12 1961

J. H. Goodman, Service Manager
Ref. E. 406
Post to file

DEFENDANTS' EXHIBIT 417

Document No. UC-86

Description of Document:

Memorandum

Date:

March 22, 1961

Addressed to:

H. C. Fodrie, Spartanburg Salesman

CC:

J. H. Goodman, Spartanburg Service Mgr.

F. B. Grimes, Spartanburg Sales Mgr.

Written by:

W. R. Koopman, Sales Correspondent, Spartanburg

Other data:

Mentioned in Note;

F. B. G.—F. B. Grimes (above)

Pat—H. C. Fodrie (above)

Exhibit Text 13

FORM 2-595

UNION BAG-CAMP PAPER CORPORATION

UC-86

TO Mr. H. C. Fedrie AT Charlotte SUBJECT Springer Cotton Mills
 FROM W. R. Koopman AT Spartanburg DATE March 22, 1961 (dic. 3/21/61)

cc: Mr. J. H. Goodman
 Mr. F. B. Grimes

We are submitting a quotation with discounts varying from 23% to 32%. The 23% item is on a tear tape carton; 30% is deducted on the 10 FCC, and the balance of the quotation is submitted on a 32% discount.

We are very anxious to know how we stand with this account, and once again I am going to ask you to follow up with Warren Munday and ask how we stand. If we do not get orders with a minimum 32% it would venture to say that we will remain at our previous level.

Pat, let me have this information as soon as you can. The quotation is due by March 24 with delivery on the majority of the items April 5.

WRK
WRK:k

3/28/61

F.B.G.

THREE (3) COMPANIES HAD PRICES LOWER THAN
 OURS ON SUBJECT QUOTE (DATED 3/22/61).

LOT OF "HUNGRIER" FOLKS, IT WOULD SEEM.

Thank you.

Pat

417
 MAR 30 1961

DEFENDANTS' EXHIBIT 418

Document No. UC 87 & 88 (2 pages)

Description of Document:**Memorandum****Date:****March 22, 1961****Addressed to:****J. I. Pritchett, Regional Sales Mgr.****Written by:****J. E. Faulkner, Jr., Jamestown Sales Mgr.****Other data:****Mentioned in text:****Ed Greene, Jamestown Salesman****John Hendricks, Purchasing Representative,****R. J. Reynolds Tobacco Company****Exhibit Text**

W 650
 UC-87
 UNION BAG-CAMP PAPER CORPORATION
 JAMESTOWN

4/16/61
 ES CHRENDING

TO Mr. J. I. Pritchett AT Savannah Box SUBJECT R. J. Reynolds Tobacco Company
 FROM J. E. Faulkner, Jr. AT Jamestown DATE March 22, 1961

As you know, we furnished the Camel 12M carton to this account for a number of years. On a quarterly basis, Reynolds requests quotations on the Camel, Prince Albert, Winston, and Salem cartons. In December, 1960, we quoted the following prices for the first quarter of 1961:

Camel	-	\$131.65
Prince Albert	-	\$ 89.25
Winston	-	\$154.60
Salem	-	\$154.60

On the basis of this quotation, we received an order for 134,400 Camel's for delivery the first quarter.

Last week, Reynolds requested prices on these same boxes for delivery during the second quarter. On Thursday of last week, Ed Greene called on John Hendricks in an effort to determine what the situation was in regards to quotations which he might have received. Mr. Hendricks told Ed he had received prices which were "all over the lot". He told Ed that Union Bag would have to better their first quarter price if we hoped to secure any business for the second quarter.

With this customer guidance, and the knowledge that the market price on corrugating medium had dropped from \$1.72 last fall to \$1.38 March 15, I called on Mr. Hendricks last Friday and submitted the following prices:

Camel	-	\$127.70
Prince Albert	-	\$ 86.60
Winston	-	\$149.95
Salem	-	\$149.95

These prices reflect a decrease of 3% below the prices which we quoted for the first quarter. Actually, the prices do not reflect a full decrease in the price of corrugating medium from a \$1.72 to \$1.38, but they do reflect an approximation of the decrease in the price of the corrugating medium from \$1.55 to \$1.38. Instead of figuring it out to the exact penny, I made a round percentage reduction of 3%, in the hopes that we might build position in the account.


This morning, John Hendricks called me on the telephone and said that he had received prices yesterday which made our quotation completely out of line. He indicated that we would not receive any business from Reynolds unless we wanted to revise our March 17 prices. Upon further questioning, he indicated that some of his suppliers had reduced their price by a minimum of the difference in the price of corrugating medium from \$1.72 to \$1.38. He said that he had already placed a good portion of his second quarter's requirements but would hold a part for me if I cared to requote. I told him that I would be glad to go over our quotation and see if I could make further adjustments and call him.

After talking to Mr. Hendricks, I got our estimate cards and decided to re-figure our prices on the basis of reducing our first quarter prices by the full amount of corrugating medium reduction from \$1.72 to \$1.38. This gave me a board multiplier reduction of 53 cents per thousand square feet. As a result of this calculation, I called Mr. Hendricks and submitted the following revised prices:

VS
 4/18-1

DEFENDANTS' EXHIBIT 418

Continued

Continued Exhibit Text 

W 651
UNION BAG-CAMP PAPER CORPORATION
JAMESTOWN

Page 2

TO Mr. J. I. Pritchett AT Savannah Box SUBJECT R. J. Reynolds Tobacco Company
FROM J. E. Faulkner, Jr. AT Jamestown DATE March 22, 1961

Camel	-	\$124.90
Prince Albert	-	\$ 84.70
Winston	-	\$147.10
Salem	-	\$147.10

Mr. Hendricks told me that I was still pretty far out of line on the Winston, Salem, and Prince Albert business, and he suggested that I forget any possibility of securing any portion of that. He also said that I was still slightly out of line on the Camel box, but a very minor adjustment would place me in a competitive position. After much discussion, justification, horse trading, negotiation, etc., I told Mr. Hendricks that I would offer him a final price of \$124.50. After much deliberation, he said that he would accept that price and forward an order for Camel business on that basis.

As you can see, this price has fallen to an extremely low point. In order to hold our position in the account, however, I feel that we were under the necessity of meeting the competitive situation as outlined by Mr. Hendricks.

Eed-

JEF/19

J. E. Faulkner, Jr.

Ref. 418

DEFENDANTS' EXHIBIT 424

Document No. UC-96

Description of Document:

Letter

Date:

March 30, 1961

Addressed to:

Union Bag-Camp Corp.

Written by:J. H. Leverette, Purchasing Agent, Southern Plants,
The American Thread Company**Other data:**

[None.]

Exhibit Text

The American Thread Company

(INCORPORATED)

SEVIER, NORTH CAROLINA

(MAILING ADDRESS - P. O. BOX 302, MARION, N. C.)

TELEPHONE MARION 2100

March 30, 1961

Union Bag-Camp Paper Corp.
P. O. Box 1965
Spartanburg, South Carolina

Gentlemen:

In comparing your recent revised prices we find that you are high on the following cases as shown below:

CASE NO.	UNION BAG PRICE	COMPETITOR'S PRICE
37% SG-2'	\$87.55 + \$25.00	\$84.65 + \$25.00
4% ART. V-1'	211.85 + 26.50	201.15 + 26.50
6% V9-12'	73.10 + 26.50	68.55 + 26.50
3% 16/50'	146.55 + 26.50	142.45 + 26.50
1% 35/18'	261.80 + 26.50	258.05 + 26.50
1% 40/14 NC	294.40 + 31.00	290.85 + 26.50
1% 40/14'	289.25 + 26.50	284.60 + 26.50
4% 50/100'	106.15 + 26.50	101.30 + 26.50
6% 91/20'	269.70 + 26.50	251.50 + 26.50
4% 150/10'	354.65 + 26.50	330.50 + 26.50
1% 235/10'	247.60 + 26.50	243.65 + 26.50
3 500/50'	80.85 + 26.50	77.95 + 26.50
2 LSN 5'	209.55 + 25.00	203.85 + 25.00
2 B-25'	206.25 + 26.50	201.35 + 26.50
1 675/25'	93.15 + 26.50	85.55 + 26.50

Please advise if you wish to revise your prices to the above level.

Yours very truly,


J. H. LEVERETTE
J. H. LEVERETTE
Purchasing Agent
Southern Plants

JHL:mf

MAR 31 1961

DEFENDANTS' EXHIBIT 437

Document No. UC-120

Description of Document:**Memorandum****Date:****April 7, 1961****Addressed to:****Mr. (J. E.) Faulkner, Jamestown Sales Mgr.****Written by:****(E. L.) Greene, Jamestown Salesman****Other data:****Mentioned in Text:****Mr. Gunn, Purchasing Representative,
Hygrade Food Products Company****Exhibit Text** 

HIGHLAND CONTAINER COMPANY *UC-120*

Greene

Office to

Office Date

*4/7/61*Subject Hygrade Food Products Co. Attention of Kr. Faulkner

I took our quote of 4/4/61 into above account and was told by Kr. Gunn that our price was so far out of line it was pitiful. Our price on the L-C-170 was \$7117.55 per M in 5Klots. Wyerhausers price for the same item was \$ 88.80 On the D.C. 163 our price was \$ 65.05 Wyerhausers price was 54.00. All of the Richmond Companies have met these prices that have been brought in by Wyerhauser and Wyerhauser has very little for their efforts. I dont think a price here is any good with out a long term contract which they will not give. When you come up here I still want you to go by with me.

*Quote**13⁰⁰**+1500**less 1570**finished*

Thanks

*ED**Ref L 457*

DEFENDANTS' EXHIBIT 447

Document No. UC-140

Description of Document:

Memorandum

Date:

April 21, 1961

Addressed to:

R. C. Day, Savannah Asst. Sales Mgr.

CC: J. W. Butler, Savannah Sales Mgr.

T. J. Fahey, Account Mgr., Jamestown


W. H. Bibbey, Sales Correspondent, Savannah

Written by:

H. C. Brown, Jr., Savannah Salesman

Other data:

[None.]

Exhibit Text 

W 267L UC-140
 UNION BAG-CAMP PAPER CORPORATION

TO R. C. Day AT Savannah SUBJECT Cherokee Manufacturing Co.
 FROM H. C. Brown, Jr. AT Atlanta DATE April 21, 1961

cc: J. W. Butler - Savannah
 T. J. Fahey - Atlanta
 W. H. Bibbey - Savannah

The subject company, located in Winder, Georgia, represents approximately \$2,354.54 per year in corrugated boxes. We have been receiving 100%. Our recent quotation of April 4, 1961, was \$503.65 per M on their 6'X box. Owens-Illinois submitted a price of \$443.70 and got an order for 1M plain boxes. Our quotation was on a printed box. This represents a 10% reduction.

We can submit a competitive price if we desire.

WFB-

PL send new quote
 to KCB on this item.
 New level will be
 13¢ + 25¢ less 10%

Bob -
 quote sent 4/28/61
 WFB

Ref. 447

DEFENDANTS' EXHIBIT 450

Document No. UC-144

Description of Document:

Memorandum

Date:

April 22, 1961

Addressed to:

J. E. Faulkner, Jamestown Sales Mgr.

Written by:

Harvey J. Sutlive, Jamestown Salesman

Other data:

Mentioned in Note:

Ken—K. H. Payne, Jamestown Service Mgr.

Exhibit Text

Avoid Verbal OrdersHIGHLAND CONTAINER COMPANY *HC-144*

JAMESTOWN, NORTH CAROLINA

Subject Mt Hope Mills

Our Order No. _____

Attention Mr. J. E. FaulknerFrom Harvey J. SuttivaDate 4-22-61

Mr Sara Parrott of Mt Hope informed me this past week that 5 box
makers have cut our last quotation by 6%. She also said if we
expected to become a supplier we would have to do like wise.

Harvey

Ken -

*Reduce our last price
by 10% - Give quote to
Harvey to take in -*

BT

*Mail 4-26 - to Harvey
Lue*



4/28/61

DEFENDANTS' EXHIBIT 459

Document No. UC-160

Description of document:

Note (Attached to UC-161, a memo)

Date:

[None.]

Addressed to:

Jim—J. H. Goodman, Spartanburg Service Mgr.

Written by:

W. R. Koopman, Sales Correspondent, Spartanburg

Other data:***Mentioned in Text:**Horace Doan, Purchasing Representative,
Spinners Processing Co.**Exhibit Text**

*** Handwritten body of text is as follows:**

"Jim—Horace Doan claims he has a price of \$875.00 approx. on this item from someone & they cut it 10% for the remainder of the year. Received 50% of business. Suggest we go to \$800.00. Gair has been shipping here. Owens, H&D, Gaylord, active."

111-160

Jim - Horace Doan
 claims he has a
 price of \$75.00 approx.
 on this item from
 someone & they cut
 it 10% for the
 remainder of the year.
 Received 50% of business,
 Suggest we go to \$80.00
 Springfield Hair has been
 shipping here. Owens,
 H & D, Hayford, active.

4/24/59

DEFENDANTS' EXHIBIT 462

Document No. UC-163

Description of document:

Memorandum

Date:

May 7, 1961

Addressed to:

R. C. Day—Asst Sales Mgr, Savannah


Written by:

M. D. Ellis, Salesman, Savannah

Other data:

Mentioned in Text

Bill—Bill Crain, Purchasing Agent, Lawtex Corp.

Exhibit Text 

Form 3-29 Rev.

W 2478.

UC-143

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

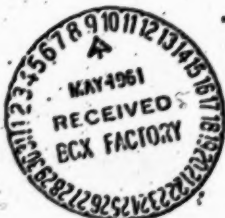
TO R. C. Day AT Savannah SUBJECT Sawtex Corp.
FROM M. D. Ellis AT Dalton DATE May 7, 61

Bob, as I advised you, Bill stated that he has had a reduction of prices that figured roughly 52 down the line.

This reduction come from a present supplier who hoped to increase their portion of business.

The price for the 1005 is \$921.21 and was \$969.70, the 755 is \$761.19 and was \$801.25.

Bill stated that if we just meet these prices he could not give us the next order on these items which will be Monday May 8th but if we did better then we should get them.



DEFENDANTS' EXHIBIT 466

Document No. UC-167

Description of document:

Memorandum

Date:

May 9, 1961


Addressed to:

J. H. Goodman, Service Mgr, Spartanburg
CC: F. B. Grimes, Sales Mgr, Spartanburg
D. R. Bloxham, Sales Correspondent,
Spartanburg

Written by:

E. Edmonds, Salesman, Spartanburg

Other data:

[None.]**Exhibit Text** 

UC-167

Mr. J. H. Goodman

Spartanburg

Hale Brothers Produce Co.

E. Edmonds

Knoxville

May 9, 1961

CC: Mr. F. D. Criss

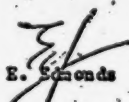
Mr. D. R. Bloxham

Jim, as requested, following is a breakdown of competitors prices quoted to the subject April 17, 1961.

Box Makers	20's	40's
1. Gaylord	\$132.20	\$115.15
2. Inland	144.20	114.60
3. Mead	140.00	120.00
4. Mengel	130.75	110.70
5. Owens Illinois	141.60	121.10
6. Star Box	128.60	123.45
7. Tri-State	135.45	113.05
8. Union Bag	127.60	105.00

Continental Can was requested to quote. However, no prices were received.

Another requirement for these boxes should be coming up in late summer or early fall. Hope this information will be helpful in future pricing decisions.



E. Edmonds

EE:ce

df E. 466
MAY 12 1961

DEFENDANTS' EXHIBIT 471

Document No. UC-176

Description of document:

Memorandum

Date:

May 15, 1961

Addressed to:

R. C. Day, Asst. Sales Mgr., Savannah

Written by:

M. D. Ellis, Salesman, Savannah

Other data:

Mentioned in Text:

Mr. Elsberry, Purchasing Representative
Dell-Rube Chenilles

Form 3-29 Rev.

W 2424

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

UC-176

TO R.C. Day AT Savannah SUBJECT Dell-Rube Chemille
FROM M.W. Ellis AT Dalton DATE May 15, 61

But, as I advised you I saw a Star Box quoted dated 5/1/61 on which the price of the #100 mat Box was \$868.65 in 69-69 and the #75 mat was \$751.60 in 69-69.

Mr. Elsberry advised that Mergle then cut these prices in with the price of the #100^{mat} being \$820.00. Star Box then lowered their price again so that the #100^{mat} price is approx \$808.00/m in 69-69.

Mr. Elsberry would like us to request all items and quote the #100 mat + 75 mat in both 69-69 and 69-36-47 for comparison.

Since we were given price info to Mr. Elsberry would be hesitant at going along with us if we just meet these prices. I will need our quote by May 22nd.

Don

DEFENDANTS' EXHIBIT 472

Document No. UC-182

Description of document:

Memorandum

Date:

May 19, 1961

Addressed to:


R. (Robert) Clowers, Spartanburg Salesman

Written by:

J. H. Goodman, Service Manager, Spartanburg

Other data:

Note: Bob C.—R. Clowers (above)

Exhibit Text 

FORM 8-575

UNION BAG-CAMP PAPER CORPORATION

UC-182

TO Mr. R. Clowers AT Spartanburg SUBJECT Excelsior Underwear, Inc.
 FROM J. H. Goodman AT Spartanburg DATE May 19, 1961 (dic. 5/18/61)

Please refer to my memo of May 11th and advise if you have been able to verify the \$549.45/M price which we met on the subject customer's box No. 48-S. Also advise who quoted this price.

TO *J.H.G.*
 JHG/mvo 5-26-61 *J. H. Goodman*

Was UNABLE TO GET THIS INFO ON A RECENT VISIT. BUT WILL GET IT FOR YOU EVENTUALLY. THIS CUSTOMER HAD PRICES ALL OVER THE PLACE LOWER THAN OURS ON THE ORIGINAL QUOTATION. IN RECENT WEEKS, I HAVE SEEN QUOTATIONS FROM MERRI, OWENS-ILL & DIXIE ON THE GOVERNMENT EDITION ON THE LBS WHICH WERE ~~THE~~ LOWER THAN OURS. ORIGINAL QUOTATIONS

OTHER COMPANIES, WEYERHAEUSER & POSSIBLY CAROLINA CONTAINER ARE ~~SELLING~~ ^{CUTTING} PRICES IN THIS ACCOUNT.

Bob C *472*

DEFENDANTS' EXHIBIT 484

Document No. UC-210

Description of document:
Inter-Office Communication

Date:
[None.]

Addressed to:
J. E. Faulkner—Sales Manager, Jamestown

Written by:
E. L. Greene—Salesman, Jamestown

Other data:
Handwritten Note:
Jean—Jamestown typist
B—Bob Burnett, Sales Correspondent, Jamestown

Exhibit Text

INTER-OFFICE COMMUNICATION

From: *E. J. [unclear]* UC-210
 UNION BAG-CAMP PAPER CORPORATION

SUBJECT

DATE

Reply Message

To: [unclear]
J. E. Jawlkmr
 Jail mty Co. Inc.
 This is based on Con Can - for items.
 We are selling Joe + M + B Heaaway. I
 asked Joe if I could make a copy of their
 guide & he said let him get his name
 off and I could just have the original.
 I hope you can meet them.

TURN TO:

REPLY:

SIGNATURE

DATE

REPLIER'S COPY - RETAIN FOR YOUR FILES

SIGNATURE

SIGNATURE

ORIGINATOR—DETACH AND RETAIN

DEFENDANTS' EXHIBIT 485

Document No. UC-211

Description of document:

Quotation—Continental Can Co.

Date:

June 12, 1961

Addressed to:

[None.]

Written by:

James C. Wall, Jr., Sales Service Manager Continental Can Company, Robert Gair Division, Richmond, Virginia

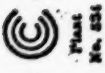
Other data:

Salesman:—Stanbury

Exhibit Text

CAN COMPANY, INC.

JOHNIT GARR DIVISION
 AND SHIPPING CONTAINER PLANT
 Post Office Box 215
 RICHMOND, VIRGINIA
 Telephone: MI 3-8415 or LD-167



TERMS: 1% 10-NET 30 Days
 AND DISCOUNT
 ALLOWED ON PREPAY

SALESMAN SCANSBURY

BOX NO.	STYLE	LENGTH	SIZE WIDTH	DEPTH	STOCK	PLATE	TEST	JOINT	PRINTING	PRICE PER M IN QUANTITIES OF	QTY
0100	RSC	14 7/8	10 5/8	7	92.6	8	125	Taped	1 color	10000	71
0200	RSC	15 1/2	11 3/4	7	93.90	"	"	"	"	10000	78
100-12	RSC	23 3/4	21 3/4	30 3/4	457.10	"	175	"	"	1000	391
200-12	RSC	24	23	31 1/4	"	"	"	"	"	1000	426
		24	W -	L -	475.90	"	"	"	"	"	19
		31 1/2	23	24	"	"	"	"	"	"	"

F.C.B. - Richmond, Virginia - one week delivery
 First two lots to be shipped in 2500 lots each
 and last two items to be shipped in 500 lots each.

Q. L. 485

James C. Hall, Jr.
 Sales Service Manager
 June 12, 1961

UC-211

QUOTATION

DEFENDANTS' EXHIBIT 486

Document No. UC-215

Description of document:

Memorandum

Date: —

June 13, 1961

Addressed to:

F. E. Kneip—Gen. Sales Mgr., N. Y.


Written by:

J. E. Faulkner, Jr.—Jamestown Plant Sales Mgr.

Other data:

Mentioned in Text:

Fred—Kneip, above

J. L. Camp, Jr.—Member Union-Camp Executive
CommitteeMr. Gwaltney—Purchasing Representative Gwaltney,
Inc.Exhibit Text 

UC-215

Mr. F. E. Kneip

New York

Gwaltney, Inc.

J. E. Faulkner, Jr.

Janestown

June 13, 1961

Reference is made to your June 1st letter to Mr. J. L. Camp, Jr. regarding our situation with the above.

Fred, this is certainly becoming one of the most difficult situations to deal with. Ever since our prices were cut in this account a little over a year ago, we have been constantly revising. The pattern is usually the same. Mr. Gwaltney tells us that he has lower prices, consequently we revise in an attempt to become competitive. When we take in this quotation, Mr. Gwaltney says that he believes that we are finally competitive and he thinks he can send us some orders. When we press him further, he always says that he has no business to place at the moment, but he will be ready to order in two or three weeks. By the time we follow up, he advises that our prices are once again out of line.

This week, I am figuring a new quotation which will be submitted to the customer within the next week or ten days. The prices have now reached a very low point, and I do not feel we should revise anymore after this present quotation is submitted.

As the situation develops, I will keep you posted.

JEF/lp

J. E. Faulkner, Jr.

JEF 426

DEFENDANTS' EXHIBIT 492

Document No. UC-221

Description of document:

Memorandum

Date:

June 13, 1961

Addressed to:


J. E. Faulkner, Jr.—Sales Mgr., Jamestown

Written by:

D. F. Sinclair—Salesman, Jamestown

Other data:

Mentioned in Text:

Mr. Hege, Purchasing Representative, Siceloff Mfg.
Co.Exhibit Text 

Form E-578

UC-221

UNION BAG-CAMP PAPER CORPORATION
JAMESTOWN

TO J. E. Faulkner, Jr. AT Jamestown SUBJECT Sicoloff Mfg. Co.
FROM D. F. Sinclair AT Hickory DATE June 13th, 1961

Mr. Hoge related a softening of the cartin market yesterday. Two box manufacturers have listed lower prices--Miller and Richmond.

		Miller	Richmond	UB
#MD	500	826.80	978.00 (90/90)	899.60
#MO	500	610.85	614.60	637.65
#6P	500	451.75	459.00	471.20
#BO	500	448.55	459.80	467.75
#LPP	500	230.05	228.95	239.20
#SMPP	250	233.30	249.05	240.10
#SJPP	250	321.10	342.95	332.80

They will not be in the market before July vacation but would like to put prices in before that.... Please mail prices to me.

Thanks.

Don.

*Refigure on
1235 Less 5% M+M
2500 S. 21.
on M+M quote spec.
price of 82500
in 500 lb*

*Send quotes on
Lexington
+
Stake Florida
to Don Sinclair*

*✓
dy/ E. 22*

DEFENDANTS' EXHIBIT 502

Document No. UC-247

Description of Document:

Memorandum

Date:

June 20, 1961

Addressed to:

R. C. Day—Asst. Sales Mgr, Savannah

CC:

• J. W. Butler—Sales Mgr, Savannah

A. W. Dowell—Sales Service Mgr., Savannah

Written by:

A. Smith—(Al) Smith, Salesman, Savannah

Other data:

Mentioned in Text:

Mr. Germano—Purchasing Representative,

Pierce Shoe Co., Waycross, Ga.

Exhibit Text

Form 3-29 Rev.

W 3026

UC-247

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

TO Mr. R. C. Day AT Savannah SUBJECT Pierce Shoe Co., Waycross, Ga.
FROM A. Smith AT Savannah DATE June 20, 1961

cc: Mr. J. W. Butler
Mr. A. W. Dowell

Mr. Germano broke the news to me that competition has slashed prices in the account 20%.

Do you want to take any action on this?

The buyer would like a quote from us. The current active sizes are:

36-24 } all S/B 3PIC
36-3
36-5
24-10

Just 13% + 2% = - 20%
Give quote to Smith.

A. Smith

1/20

W 3026

DEFENDANTS' EXHIBIT 510

Document No. UC-259

Description of Document:
Memorandum**Date:**
6/29/61**Addressed to:**
Mr. Faulkner—J. E. Faulkner, Sales Mgr, Jamestown**Written by:**
B. G. Kerr, Salesman, Jamestown**Other data:***
Mentioned in Text:
Mr. Stout, Purchasing Representative
Boling Chair Co. & Stout Chair Co.
Handwritten Note:
Ken—K. H. Payne, Service Mgr, Jamestown
JEF—J. E. Faulkner (above)**Exhibit Text**

*** Text of handwritten notations are as follows:**

"Ken: Price all Boling Chair & Stout Chair items on 15.00 25.00 S.U. less 5% M/M. Effective immediately—Change any active orders on file—"

"O.K. Orders changed 6-30-66."

HIGHLAND CONTAINER COMPANY UC-259

Office to _____ Office Date 6/29/61
 Subject Boling Chair Co. Attention of Mr. Faulkner
Siler City, N. C.
and
Stout Chair Co.
Liberty, N. C.

Mr. Stout told me today that he already had a 2% reduction in his prices for 3 months and had been told that additional decrease was forthcoming.

I suggested to him that we reduce our prices to him by 5%, effective with shipments made on and after July 10. He agreed to this with understanding that we keep him advised of conditions that may create further changes.

BOKert

OK
 Order changed
 6-30-61

Re: Price all Boling Chair
 & Stout Chair items on 1500 2500 S.H.
 Less 5% MIM. Effective
 immediately.
 Change any active orders
 on file -
 jf

df 510

DEFENDANTS' EXHIBIT 522

Document No. UC-290

Description of Document:**Memorandum****Date:****July 17, 1961****Addressed to:****J. I. Pritchett, Regional Sales Mgr, Savannah****CC:****R. C. Day, Asst. Sales Mgr, Savannah****F. E. Kneip—General Sales Mgr, N. Y.****L. A. Wulff—Asst. Gen. Sales Mgr, N. Y.****Written by:****J. W. Butler, Sales Mgr, Savannah****Other data:****[None.]****Exhibit Text**

Form 3-29 Rev.

W 664

UC-290

**UNION BAG-CAMP PAPER CORPORATION
SAVANNAH**

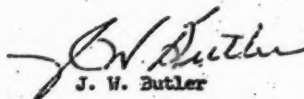
TO Mr. J. I. Pritchett AT Savannah SUBJECT U. S. Rubber Co., Marietta, Ga.
 FROM J. W. Butler AT Savannah DATE Jul-17, 1961

cc: Mr. R. C. Day
 Mr. F. E. Kneip, N.Y.
 Mr. L. A. Guliff, N.Y.

So as to keep everyone informed and our records up to date, I have the following information to report concerning price activity here in the southeast.

Subject concern's 3rd quarter requirements were awarded to Continental Can Co., Atlanta, Ga. Subject concern has 13 different items and the #10 carton is the most attractive as far as quantity and desirability from a manufacturing standpoint.

We have been supplying subject concern with their #10 cartons since 1955. On the last go-round we quoted a verbal price of \$23.50 per thousand and then requested a price of \$771.10 per thousand, which is 25% off the \$13.00 manual. Continental Can Co. took the #10 cartons for \$665.00 per thousand which is approximately 35% off the \$13.00 manual. This will return them approximately \$137.00 per ton. We were offered this business at \$665.00 per thousand, which we refused.


 J. W. Butler

JWB:ds

DEFENDANTS' EXHIBIT 527

Document No. UC-298

Description of Document:**Memorandum****Date:****July 19, 1961****Addressed to:****R. C. Day—Asst. Sales Mgr, Savannah****Written by:****T. Swails—Savannah Salesman****Other data:*****TES—T. E. Swails (above)****Exhibit Text***** Handwritten text of body of Exhibit is as follows:**

"Mr. Guthunz of subject said our prices were 10% higher than I.P. We will get some business with a competitive price—

Please advise."

"Requote at 13.00 & 25.00 less 15% Send quote to TES"

Form 3-29 Rev.

W 3022

UC-298

UNION BAG-CAMP PAPER CORPORATION
SAVANNAH

TO R. C. Day AT Sav. SUBJECT North-Morris Box Co.
 FROM T. Swails AT col DATE 7/19/61

Mr. Hartung of subject said our
 prices were 10% higher than S.P.
 we will get some business with
 a competitive price -

Please advise

Requote at $13\% + 25\% \text{ less } 15\%$
 Send quote to TCS



10/1-EL 527

DEFENDANTS' EXHIBIT 529

U. S. v. Container Corporation et al.
Document No. UC-303

Description of document:

Memorandum

Date:

July 20, 1961

Addressed to:


J. E. Faulkner, Jr.—Jamestown Sales Mgr.

Written by:

T. J. Fahey—Asst. Sales Mgr., Jamestown.

Other data:

[None.]

Exhibit Text 

FORM 6-372

UNION BAG-CAMP PAPER CORPORATION JAMESTOWN

UC-303

TO: Mr. J. E. Faulkner, Jr. AT: _____ SUBJECT: Celanese
FROM: T. J. Fahey AT: _____ DATE: July 20, 1961

Mr. Misfeldt received quotes from nine different companies. No one company was consistently low. Our prices were in the middle bracket. Listed are our prices on the following items as compared with the low price quoted.

Item	U.B.C.P.	Low Quote
F-87-1	\$ 427.20	\$ 399.50
F-47	83.00	73.50
T-139	1146.25	940.25
F-266	1315.20	1043.35

Mr. Misfeldt believes that only 4 or 5 out of the nine companies quoting will be in a position to warehouse. He also believes that if a company will warehouse their prices will be adjusted upwards accordingly. Therefore, I believe that our present prices may eventually hold up.

Also Mr. Misfeldt requests that we write him a letter qualifying what we will run, and the number of truck loads we will hold in storage for him. This information will then be collected and presented to Mr. Kramer for final decision. The decision on suppliers will be determined after this meeting.

Tom
T. J. Fahey

TJF/lp

def. 2-50

DEFENDANTS' EXHIBIT 555

Document No. UC-365

Description of Document:**Memorandum****Date:****August 30, 1961****Addressed to:****J. T. Hough—Spartanburg Salesman****Written by:****F. B. Grimes—Spartanburg Sales Mgr.****Other data:*****cc: J. H. Goodman—Spartanburg Service Mgr.****Exhibit Text**

* Text of handwritten notation is as follows:

"Dave—

P.S. He laughed since he told me previously he would probably find a fish to sandbag."

FORM 2-572

UC-365

UNION BAG-CAMP PAPER CORPORATION

TO Mr. J. T. Hough AT Greenville SUBJECT Carlisle Finishing Co.
 FROM F. B. Grimes AT Spartanburg DATE August 30, 1961 (dic. 8/29/61)

cc: Mr. J. H. Goodman

Jim, will you call Bill Davis at Carlisle; and tell him we are reverting to our old prices for the remainder of the year.

F B Grimes
 Frank B. Grimes

FBG/mwo

Done —

P.S. He laughed since he told me previously he would probably find a fish to sandbag.
 w/ E. 555

DEFENDANTS' EXHIBIT 559

Document No. UC-374

Description of Document:

Letter

Date:

Sept. 6, 1961

Addressed to:

Al Smith—Savannah Salesman

Written by:

Helen Rosengart, Treasurer Cari Classics Company

Other data:

[None.]

Exhibit Text 13

Cari Classics Company

W 2378

UC-374

CHILDREN'S BETTER DRESSES

OFFICE & FACTORY: PORTAL, GEORGIA
SHOWROOM: 1330 BROADWAY, NEW YORK, N. Y.

Sept. 6, 1961

Union Bag-Camp Paper Corp.
Savannah, Georgia

Attn: Mr. Al Smith,
Corrugated Container Division

Dear Al:

We just received a quote from Container Corp. of America, dated August 29th, giving us the following prices:

Our box, 25 x 16 x 9, \$253.10 per 1,000

Our box, 36 x 20 x 11, \$409.30 per 1,000

We are paying you for the above boxes, \$260.30 and \$447.90, respectively. This does not include the new 10% increase which you advised would be forthcoming.

I have checked with Container Corp. of America and they advise that the above prices will include the increase.

I have not placed an order with them, but will do so within the week, if we cannot establish some better prices on the above.

Please let me hear from you either way.

Our Price:

	25	36
25 x 16 x 9	260.30	233.80
36 x 20 x 11	474.40	447.90

Sincerely,

CARI CLASSICS COMPANY

AS CHECKED & ORDERED BY CCA
QUOTED ON SAME SPECS.

HR/ran



Eileen Rosengart
Treasurer

W. L. 559

DEFENDANTS' EXHIBIT 581

Document No. UC-414

Description of Document:**Memorandum****Date:**

Oct. 2, 1961

Addressed to:

J. E. Faulkner, Jr.—Jamestown Sales Mgr.

Written by:

Don Sinclair—Jamestown Salesman

Other data:*

Audrey Williamson (mentioned in text) purchasing representative, Cottonsmith Furn. Co.

Exhibit Text

* Text of handwritten notation is as follows:

"In most cases I show only lowest bid"

HIGHLAND CONTAINER COMPANY

JAMESTOWN, NORTH CAROLINA

UC-414

TO J. E. Faulkner, Jr. AT Jamestown SUBJECT Cottonsmith Turn. Co.
 FROM Don Sinclair AT Hickory DATE 10-2-61

Confirming our conversation of this date, I called on Mrs. Audrey Williamson this morning and inquired as to our status in recent carton bids.


As you know some of the ~~XXXXXXXXXX~~ cartons have interior packing which is quoted separately... In order to arrive at the cost of a total unit Mrs. Williamson adds the unit price of each item making up a complete unit with the set-ups of these units and comes to a total price in 1/2 lots. I have added ours up so the comparison will be relative.

<u>Carton #</u>	<u>Our price</u>	<u>Competitor</u>	<u>Price</u>
37-47KD	354.35	Wende	331.00
400-r/400 Parts.	699.80	Tri State	661.70
400-w/430 Parts	702.50	Tri State	664.05
#480	976.85	O-I	910.10
#525	302.10	O-I	282.00
#935	530.60	O-I	501.40
#940	750.70	Tri-State	711.00
		Wende	717.00
		H&D	718.00

O-I erred in quoting green liner on this one and is re quoting.

I did not see the actual quotes, but these figures I obtained from a worksheet which she uses to compare all prices..

All of this business has been placed at this time except for the #940 and she is waiting for O-I to quote before she places this one size.. They will again be in the market about Feb. or March at which time they should be well situated in their new plant at Salisbury, N. C. /.. At that time new requests for quotes may be forthcoming.

*In most cases
I show my lowest bid* FOR the record,
Don 

DEFENDANTS' EXHIBIT 587

Document No. UC-434

Description of Document:**Quotation Report****Date:**

[None.]

Addressed to:

[None.]

Written by:

Doug (D. H.) Hall—Jamestown Salesman

Other data:

[None.]

Exhibit Text

The Dow Chemical Company

10-12

465

UC-434

October 2, 1961

Internal Paper

2,245.55

1,980.00

our price
their price

Mr. D. O. Edkins, P/H,
told me.

15-104560

Drey

DEFENDANTS' EXHIBIT 588

Document No. UC-435-436

Description of Document:

Letter

Date:

Oct. 12, 1961

Addressed to:Caldwell Ragan, Jr.—purchasing representative,
Trenton Cotton Mills, Incorporated**Written by:**

N. M. Harrison—Jamestown Sales Correspondent

Other data:cc: R. L. Hubbard—Jamestown Salesman
"Ed"—J. E. Faulkner—Jamestown Sales Mgr.
R L H —R. L. Hubbard (above)**Exhibit Text***** Text of handwritten notation is as follows:**

"Ed—This is the account where they get 15 quotations. An *original Low Bidder* does not have a chance. —All are given a chance to call 3 or 4 times until the price is cut down to where the others who bid just give up.

"Weyerhaeuser was unloading 2 T/L there today"

October 12, 1961

Tronton Cotton Mills, Incorporated
Statesville,
North Carolina

Attention: Mr. Caldwell Ragan, Jr.

Gentlemen:

As requested in your letter of October 6, we are pleased to enclose a quotation sheet listing our current prices for 2500 corrugated containers, size 41 X 20 3/4 X 27 3/4. The price shown is figured for delivery to your plant.

Please advise if we may be of any service at any time.

Most cordially yours,

UNION BAG - CAMP PAPER CORPORATION

N. M. Harrison, Jr.
Container Sales
Jamestown Plant


RMH:tg
Enclosure

cc: Mr. R. L. Hubbard

*Ed - This is the account
where they get 15 quotations
for original LOW BIDDER does
not have a chance.
All are given a chance
to call 3 or 4 times until
the price is cut down
to, where the other who
has just give up. 10/2/61
WEYERHAEUSER now in -
No. 1012 1/2 there today, in*

DEFENDANTS' EXHIBIT 588

Continued

Continued Exhibit Text 

469
UC-436

October 12, 1961

Trenton Cotton Mills, Incorporated
Statesville,
North Carolina

F.O.B. Plant, Full Freight Allowed

Mr. Caldwell Kagan, Jr.

Salesman: Mr. R. L. Hubbard

500	3" O/L	41	20 3/4	27 3/4	350 Tex St	1G-1P	3	872.40
					90/69			



M. M. Harrison, Jr. - Highland Container Co.

DEFENDANTS' EXHIBIT 612

Document No. UC-485

Description of Document:**Memorandum****Date:**

Nov. 21, 1961

Addressed to:

F. B. Grimes—Spartanburg Sales Mgr.

Written by:

E. Edmonds—Spartanburg Salesman

Other data:

cc: J. H. Goodman—Spartanburg Service Mgr.

FORM 2-572


UNION BAG-CAMP PAPER CORPORATION

TO Mr. F. B. Grimes AT Startsburg SUBJECT Alpha Industries
FROM E. Edmonds AT Knoxville DATE November 21, 1961

CC: Mr. J. H. Goodran

Frank, Mr. Sam Galber, President of the subject, reported that Head Container quoted a price of \$543.00 P/L for the 6,000 order which we quoted \$721.45 P/L.

I have reason to believe Mr. Galber is telling the truth about the price quoted.


E. Edmonds

EE:ee

NOV 25 1961

Ch/EE 612

DEFENDANTS' EXHIBIT 838

Document No. SJ-775
(Salesman's Call Report)

Written by:

William O. Wren, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

Mr. Tidwell—buyer for customer "Mead, Atlanta"—
the Mead Corp.

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

"Mr. Tidwell said Mead, Atlanta, had lowered their price to 140.00 per m on their 30 lb Banana box. Our price was lowered to 165.00. I don't think he is telling the truth."

DATE 4-24-61	CUSTOMER Lullhorn Berona
ADDRESS Lullhorn	
CALL REPORT 775: Silver said - mail artists had lowered - then price to 190 ⁰⁰ per an on this 30th Berona said price was lowered to 765 ⁰⁰ & that this is telling the truth.	
✓	
SALESMAN <i>W</i>	775

dep. in 138

DEFENDANTS' EXHIBIT 839

Document No. SJ-776
(Salesman's Call Report)

Written by:

William O. Wren, Salesman.

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

Mr. Tidwell—buyer for customer
“Inland”—Inland Container Corp.
“Mead, Atlanta”—The Mead Corp.

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

“Mr. Tidwell showed me a calling card of Ray Williams from Inland with \$140.00 and said Mead Atlanta had given him a price of 138.00 for his 30 lb Banana box our last price was \$165.00 I don't think he has these prices. He knows the market is shakey and is trying for a rockbottom price.”

DATE	5-17-61	CUSTOMER	Bullmon Banana Co.
ADDRESS	Bullmon Ala.		
CALL REPORT:	Mr. Leland Stewart me a telling parcel of my tobacco from England with which it was not that good Atlantic had given him a price of 15¢ for his 30th Banana Box my last price was 16¢ I don't think he has the price. He knows the market in Albany. And is trying for a part better price.		
SALESMAN	Alva	776	

DEFENDANTS' EXHIBIT 927

Document No. SJ-895
(Salesman's Call Report)

Written by:

Lloyd Edward Duncan, Jr., Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other data:*

"St. Regis"—St. Regis Paper Co.

"Mead"—The Mead Corp.

"Owen-III"—Owens-Illinois Glass Co.

"Mengle"—Mengel Division of Container Corporation
of America

Exhibit Text

* Handwritten text of body of Exhibit is as follows:

"Mr. F. S. Braswell, PA. at Lee Bros. Fdy.,
Anniston, said we are 10% to 11% high on our
quotation dated Dec. 4, 1961. He showed me St.
Regis quotation dated Jan. 2, 1962. Mead, Owen-III,
and Mengle are other suppliers. lower than St. Joe.

St. Regis 1/2/62

#12 Box

5M-\$249.90

7500- 348.00

#14

1500-\$422.31

2500- 421.95

St. Joe 12/4/61

#12 Box

5M-279.05

7500-242.00

#14

2000-471.55

3000-467.10"

SALES INTERVIEW REPORT

ST. JOE PAPER CO.
Birmingham Container Division

TO	Completed
<input checked="" type="checkbox"/> Sales Manager	1/2/62
<input checked="" type="checkbox"/> Gen. Manager	
<input checked="" type="checkbox"/> Production Manager	
<input checked="" type="checkbox"/> Sales Service	
<input checked="" type="checkbox"/> Other	
<input checked="" type="checkbox"/> National Accounts	
<input checked="" type="checkbox"/> Sales Record Clerk	

Salesman: Ed. DumasDate: Jan 4, 1962Firm Name: St. Joe Paper Co.Address: Birmingham, AlabamaPerson Interviewed: Mr. F. A. Cornwall Title: P. A.

Survey	Solicitation	Quote	Sample	Order	Order Lost	Entertainment	Complaint
	<input checked="" type="checkbox"/>	Requested	Requested	\$	\$	\$	
		Follow Up	Follow Up				

Report

Mr. F. A. Cornwall, P.A. at the
Box 76, Cornwell, said we
are 10% to 14% like our
quotations dated Dec 4, 1961. He
advised our St. Regis quotation
dated Jan 22, 1962 is much
better. See and make any
other supplies lower than St. Joe

St Regis 1/2/62 St Joe 12/4/61
12 Box # 12 Box
Follow Up: SM - 249.90 SM - 279.05
75cc - 248.00 75cc - 248.00

14 # 14
Comment: 15cc - 429.31 25cc - 471.55
25cc - 421.98 30cc - 417.10

895

4/6.927

DEFENDANTS' EXHIBIT 999'

Document No. SJ-1042
(Salesman's Call Report)

Written by:

William C. Graeme, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other Data:*

Mr. Brown—buyer for customer

"Union"—Union Bag-Camp Paper Corp.

"Meade"—The Mead Corp.

Exhibit Text

- * Body of handwritten text of exhibit is as follows:

"Mr. Brown said he has received new quotes from Union and Mead that are under ours in like quantities.

He showed me their prices & the following is this information.

Our price	Competition.	Brown gave us
#2 67.65		an order for 3
#3 85.45	62.00 (Mead)	sizes at our
#5 90.75	83.40 (Mead)	competition's
#6 discontinued	83.50 (Union)	level. Please
		send him new
#8 72.45	69.00 (Union)	quotes at com-
small book folder....62.00	59.00 (Union)	petitive prices."
large " "67.80	64.00 (Union)	

Pctd. 10-8-62

CALL REPORT

Salesman Harris Date 10/4/62
 Name Uniform Printing & Supply Co. Buyer Bruce Brown
 Street _____ Telephone _____
 City Harrisville Follow Up _____
 Inquiry Attached _____ Sample Order Attached _____ Orders Enclosed _____

Report: Mr. Brown said he has received new quotes from
Union & heard that our index was in the quantities. He
thinks our price & the following is the information:
our price Competition Brown gave us an order
 #2 (100) 67.65 62.00 (Union) for 3 yrs at our competitor's
 #3 85.45 83.40 (Union) and please send him
 #5 90.75 83.50 (Union) new quotes at competition
 #6 discontinued _____ prices
 #8 72.45 69.00 (Union)
 small bag p/bk. 62.00 54.00 (Union)
 large " 87.80 64.00 (Union)

1042

def 2 979

DEFENDANTS' EXHIBIT 1019

Document No. SJ-1065
(Salesman's Call Report)

Written by:

William C. Graeme, Salesman

Submitted to:

L. C. Houston, Sales Manager
Birmingham Plant, St. Joe Paper Co.

Other Data:*

Joe—Joe Stone, buyer for customer

"CCC"—Continental Can Co.

"Meade"—The Mead Corp.

"Lee"—Lee Taylor, Sales Service Mgr., St. Joe

"Jack"—Jack Wyche, General Manager, Port St. Joe
Plant, St. Joe

Note by Wayne Ashley, Asst. Sales Mgr., St. Joe

Exhibit Text

* Handwritten body of text of Exhibit is as follows:

"Joe said our price on the #10 carton (this represents 50% of his volume) is 5% high—CCC was low. with Meade a close second, we were third from low. On the rest of the sizes we were between 7% & 8% high. At any rate he let us meet CCC's price of 814.00 per M for his next quarters business of #10."

File for Coling Lee - Pass to Jack. w.
CALL REPORT *(P.L.)* *(1/12)* *st*

Salesman Greene Date 6/21/62

Name U.S. Rubber Co. Buyer Joe Stone

Street _____ Telephone _____

City Hogansville Follow Up _____

Inquiry Attached _____ Sample Order Attached _____ Orders Enclosed _____

Report Joe said our price on the #10 carton (this
replaces 50% of his volume) is 5% high - CCC
was low with made a close second, we were third
from low. On the rest of the size we were
between 7% - 8% high. At any rate he
said we must CCC's price of \$14.00 per M for
his next quarters business of #10

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STANLEY, *Chief Judge*: The plaintiff, United States of America, seeks by this civil action to prevent and restrain an alleged violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Briefly summarized, the complaint charges that "the defendants have engaged in a combination and conspiracy in unreasonable re-

straint of . . . interstate trade and commerce in corrugated containers, in the Southeastern United States, in violation of Section 1 of the Sherman Act"; that the "combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers"; that for "the purpose of effectuating the . . . combination and conspiracy the defendants have done those things which . . . they combined and conspired to do"; and that the "combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated containers to purchasers located in the Southeastern United States."

Each defendant timely filed answer denying, in all material respects, the allegations of the complaint. Additionally, defenses are raised based on the provisions of a consent decree approved and entered on April 23, 1940, by the United States District Court for the Southern District of New York, in the action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" (Civil Action No. 8-318).

The case was tried by the Court without a jury. The commendable cooperation of counsel for the plaintiff and for all of the defendants in streamlining both discovery procedures and the presentation of evidence at the trial, resulted in many of the facts, including documents and other exhibits, being stipulated. Appreciation is again expressed to all counsel for their efforts and accomplishments in this regard.

The Court, after giving due consideration to the

pleadings and the evidence, including exhibits and stipulations, the requests and briefs submitted by the parties, and the oral arguments of counsel, now makes and files herein its Findings of Fact and Conclusions of Law, separately stated:

FINDINGS OF FACT

I. GENERAL FINDINGS

1. Jurisdiction of the subject matter duly appears, and proper venue of the defendants is not contested.

2. For purposes of brevity, the defendants are referred to herein by the following abbreviated names:

Container Corporation of America	Container Corporation.
Albemarle Paper Manufacturing Company	Albemarle.
Carolina Container Company	Carolina.
Continental Can Company, Inc.	Continental.
Crown Zellerbach Corporation	Crown Zellerbach.
Dixie Container Corporation	Dixie.
Dixie Container Corporation of North Carolina	Dixie of North Carolina.
Inland Container Corporation	Inland.
International Paper Company	International.
The Mead Corporation	Mead.
Miller Container Corporation	Miller.
Owens-Illinois Glass Company	Owens-Illinois.
St. Joe Paper Company	St. Joe.
St. Regis Paper Company	St. Regis.
Tri-State Container Corporation	Tri-State.
Union Bag-Camp Paper Corporation	Union-Camp.
West Virginia Pulp and Paper Company	West Virginia.
Weyerhaeuser Company	Weyerhaeuser.

3. Except as otherwise stated or required by context, the facts herein found occurred or existed within the period from January 1, 1955, to October 14, 1963 (hereinafter referred to as the "period covered by the Complaint"), and within, and are limited to the Southeastern United States (herein defined as the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky).

4. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular

course of its business, except that the following defendants were not engaged in the corrugated container business in the Southeastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959.
Continental	October 28, 1956.
Crown Zellerbach	November 30, 1955.
Dixie of North Carolina	March 1, 1959.
Mead	December 27, 1956.
Owens-Illinois	October 4, 1956.
St. Regis	October 2, 1958.
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch).
Weyerhaeuser	May 1, 1957.

5. Most of the corrugated containers sold by each of the defendants in the regular course of its business were manufactured by it upon customer order, and in accordance with the specifications prepared by or for the particular customer so ordering, as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this Finding.

6. The basic material used in the manufacture of corrugated containers is corrugated containerboard consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard.

7. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured.

II. THE INDUSTRY

8. Aggregate dollar sales of corrugated containers for all defendants for each year since, and including, 1961 were in excess of \$100 million per year. At the time of the filing of the Complaint herein, the aggregate shipments of corrugated containers of all defendants from plants in the Southeastern United States represented approximately ninety per cent (90%) of total shipments of corrugated containers from all plants in the Southeastern United States.

9. During the period covered by the Complaint, there has been growth and expansion of the corrugated container industry in the Southeastern United States. From an industry comprised in 1955 of 30 manufacturers having a total of 49 corrugated container manufacturing plants, it has grown to an industry comprised in 1963 of 51 manufacturers having a total of 98 such plants. In January of 1955, the beginning of the period covered by the Complaint, 9 of the 18 defendants, and 21 non-defendants, were engaged in the corrugated container business in the Southeastern United States. In 1963, the end of the period covered by the Complaint, there were a total of 18 defendant and 33 non-defendant corrugated container manufacturers in the Southeastern United States. During the same period, shipments of corrugated containers from plants located in the Southeastern United States increased from slightly over 9 billion square feet in 1955 to almost 16 billion square feet in 1963. The growth and expansion is illustrated by the following statistics showing the number of such

plants in the Southeastern United States and the volume of shipments therefrom:

Year	Total	Number of Plants		Shipments of Corrugated Containers (Millions of Sq. Ft.)
		Defendants	Others	
1955.....	40	18	31	9,077
1956.....	56	21	35	9,659
1957.....	59	30	29	10,026
1958.....	67	36	31	10,400
1959.....	71	43	28	12,328
1960.....	76	46	30	12,266
1961.....	81	53	28	13,481
1962.....	85	55	30	14,831
1963.....	98	58	40	15,846

10. In 1963, there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year, the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who, in the course of their sales activity in behalf of their respective companies, each business day made on the average 4 or 5 calls each on purchasers or potential purchasers. In October, 1963, the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States:

Company	Number	Company	Number
Container Corporation.....	57	Mead.....	26
Albemarle.....	9	Miller.....	7
Carolina.....	15	Owens-Illinois.....	59
Continental.....	20	St. Joe.....	12
Crown Zellerbach.....	27	St. Regis.....	23
Dixie.....	12	Tri-State.....	5
Dixie of North Carolina.....	3	Union-Camp.....	36
Inland.....	24	West Virginia.....	17
International.....	23	Weyerhaeuser.....	36

11. Throughout the period covered by the complaint, there has been an ample supply of raw materials

available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment has been available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise.

12. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of purchasers for such containers.

13. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible.

14. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements.

15. During the period covered by the Complaint, the trend of corrugated container prices was downward, and while containerboard prices fluctuated dur-

ing the period they were substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally, and for all other commodities, excluding farm and food. During the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased.

III. NATURE AND EXTENT OF COMPETITION; EFFECT OF PRICE COMMUNICATION

16. Throughout the period covered by the Complaint, the corrugated container industry was and is highly competitive, and each defendant engaged in and was faced with price competition in the sale of corrugated containers; and the parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would so testify.

17. Throughout the period covered by the Complaint, every purchaser of corrugated containers had numerous alternate sources of supply, both actual and potential. Such purchasers were free to shift all or a part of their business from one supplier to another and they frequently did so. Although such purchasers generally did not make such shifts unless offered a lower price by another supplier, each defendant repeatedly lost customers and obtained new ones, and continuously had substantial losses and gains in its sales to particular customers. Tables 1 and 2 annexed to DX-1, and the Charts on pages 21 through 24 of DX-6, reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in said Tables and Charts are representative for each defendant of the entire period covered by the Complaint.

18. The following examples from Tables and Charts referred to in the preceding paragraph are typical of the extent of gains and losses in customers and in sales to particular customers experienced by each of the defendants throughout the period covered by the Complaint:

(a) In 1960, Container Corporation's plants in the Southeastern United States made sales of corrugated containers to a total of 3,132 accounts. Of these, 1,209 accounts, representing over 38% of all of the accounts sold by Container Corporation during that year, were new accounts; i.e., accounts which had bought nothing from any of Container Corporation's plants in the Southeastern United States during the preceding year. In addition, Container Corporation's sales during that year to another 488 of those accounts, representing over 15% of the total, amounted to more than 150% of its preceding year's sales to each of such accounts. Moreover, of the 3,132 accounts sold in 1960 a total of 1,210 (over 38%) were totally lost by Container Corporation in 1961, and its sales in 1961 to another 343 of these accounts (over 19% thereof) were less than 50% of its preceding year's sales to each of such accounts. Not only was a large percentage of Container Corporation's total Southeastern United States accounts involved in such gains and losses but the dollar volume of its sales to such accounts was also very substantial, accounting for over \$14,300,000 out of total sales of about \$29,400,000, or more than 48% of Container Corporation's total corrugated container sales from plants in the Southeastern United States.

(b) In 1960, Albemarle's plant at Richmond, Virginia, sold a total of 291 accounts. Of these, 92 (over 31%) were new accounts. Albemarle's sales in 1960 to another 49 accounts (over 16% of Albemarle's total accounts) amounted to over

150% of its preceding year's sales to each of such accounts. Of the 219 accounts sold by Albemarle in 1960, 96 (approximately 33%) were totally lost by it in 1961, and its 1961 sales to another 50 of these accounts (over 17%) were less than 50% of its preceding year's sales to each of such accounts. The dollar volume of Albemarle's 1960 sales to the accounts involved in such gains and losses amounted to almost \$1,200,000, or more than 67% of its total 1960 corrugated container sales of less than \$1,800,000.

(c) In 1960, Owens-Illinois' plants at Atlanta, Georgia, Jacksonville, Florida, Miami, Florida, and Salisbury, North Carolina, sold a total of 2,527 accounts. Of these, 908 (over 35%) were new accounts. Owens-Illinois' 1960 sales to another 381 accounts (over 15% of total 1960 accounts) exceeded 150% of its preceding year's sales to each of such accounts. Of the 2,527 accounts sold in 1960, 941 (over 37%) were lost by Owens-Illinois in 1961, and its 1961 sales to another 268 of these accounts (over 10%) decreased to less than 50% of its 1960 sales to each of such accounts. The dollar volume of Owens-Illinois' 1960 sales to the accounts involved in such gains and losses amounted to almost \$8,900,000, or more than 62% of its total 1960 corrugated sales from the above plants of less than \$14,300,000.

19. The record includes over 1,000 documents from the defendants' files. These documents are contemporaneous business records, most of which relate to specific purchasers, prepared by employees directly engaged in the sale of corrugated containers. They constitute a sampling from defendants' files, and tend to portray independent and unrestricted price competition by each of the defendants. This sampling relates to hundreds of purchasers of corrugated containers and to thousands of transactions with such

purchasers. Among other things, these documents establish that during the period covered by the Complaint:

(a) In order for a supplier or prospective supplier to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser.

(b) Purchasers usually informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices.

(c) Purchasers often informed suppliers and prospective suppliers as to the particular prices which must be met or beat in order to obtain or retain business.

(d) Upon obtaining such price information, suppliers and prospective suppliers often reduced their prices.

(e) Absent such price information, a supplier or prospective supplier often quoted prices higher than those recently charged or quoted by other suppliers.

(f) Each defendant often encountered situations in which the prices most recently charged or quoted by it were cut by other defendants, and responded to such price cutting by meeting or beating the prices quoted by such other defendants.

(g) Each of the defendants endeavored to obtain additional sales by cutting the prices which other defendants had most recently charged or quoted to their customers or prospective customers.

20. Plaintiff was furnished listings showing the name and address of every corrugated container customer in the Southeastern United States of each of the defendants, aggregating more than 10,000 such customers. No evidence was adduced by plaintiff from

any of such *customers* showing or in any way indicating that the prices charged by any one or more of the defendants were stabilized or harmonized by the requesting or furnishing of price information by or between any of the defendants, or showing or in any way indicating that the prices charged or quoted such customers were any higher than they would have been had there not been any such requesting or furnishing of price information, or showing or in any way indicating any uniformity or parallelism of prices between or among any two or more of the defendants.

21. The record contains statistics, together with graphical presentations prepared therefrom, showing for the entire period covered by the Complaint the four-week price trend of each plant of each defendant, except Albemarle, Miller and St. Joe, and the average monthly prices of St. Joe. These statistics tend to demonstrate the absence of any general uniformity, harmony, stability, or parallelism in prices either as among the several defendants or among the plants of individual defendants. Most price trends varied widely among the plants of the several defendants, both as to direction and as to degree.

IV. HOW PRICES DETERMINED

22. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following: (a) estimates prepared from its internal manual; (b) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season, and with the rise and fall of business activity of its customers; (c)

suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary; (d) availability of any special materials needed to produce the order; (e) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of the plant; (f) convenience of customer's plant location for servicing and cost of delivery; (g) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule; (h) customer's credit rating; (i) growth prospects of the account and the possibility of substantial future orders; (j) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it; (k) amount of customer's business represented by the order; (l) general market conditions in the Southeastern United States and in the corrugated container industry particularly; (m) prices of its recent sales of the same or other corrugated containers to that customer; (n) customer loyalty; (o) effect of the order on its costs and profits; and (p) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief.

23. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially

the same; or (3) there had been a change in raw material costs or other significant costs.

24. Most purchasers of corrugated containers generally purchased their containers from two or more of the defendants concurrently.

25. Prices which purchasers of corrugated containers would pay were determined on the basis of price alternatives available to them from existing and prospective suppliers. It was necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers.

26. The defendants, in selling corrugated containers, dealt with buyers who had knowledge of prices which had been and were being offered by competing suppliers of corrugated containers.

27. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information.

28. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions, therefore, no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like con-

tainers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low-quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price, irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision.

V. OBTAINING PRICE INFORMATION

29. Possible sources for obtaining the most recent price to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales, or from the particular purchaser involved. As used herein, the words "most recent price" mean either the most recent price charged a specific customer in an actual sale, or the price most recently quoted.

30. On occasions, buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers.

31. No defendant furnished any competitor most recent price information except in response to a specific request therefor. However, when such information was furnished, it was usually accurate.

32. The extent and frequency with which most recent price information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants.

33. There is no evidence of express assurance that any defendant who furnished such price information upon request of another defendant would be able to obtain price information from such other defendant.

34. There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

35. The parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that he considered that he could (with the exceptions noted in Findings 71, 167, 186 and 261), request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision.

36. There is credible evidence tending to show that, generally speaking, when price information was requested of a defendant by a competitor, such de-

defendant's decision whether or not to furnish such information was not affected by any price or price level which such competitor had previously charged or quoted or which such competitor might thereafter charge or quote.

37. Throughout the period covered by the Complaint, each defendant felt free to cut a most recent price received from a competitor, and after receiving a most recent price from another defendant occasionally charged or quoted prices lower than those received.

38. No defendant at any time had any express agreement or understanding with any other defendant with respect to any price or prices to be charged or quoted for corrugated containers, irrespective of whether or not such defendant had requested from or furnished to the other any price information.

VI. THE 1940 CONSENT DECREE

39. On April 23, 1940, a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318).

40. In addition to Container Corporation and Inland, defendants herein, the following corporations were among the defendants in the aforementioned action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

41. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court:

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

42. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated:

That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be *nolle prossed* in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and

in promoting free competition in an orderly market;

* * * * *

3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

4. That such consent decree has been tendered by defendants voluntarily and in good faith;

5. That in the opinion of the Department of Justice; the nolle prosequing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; * * *

43. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto, in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.

44. The consent decree provides, in part, as follows:

3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing, any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

(a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on

hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers; * * *

4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors.

VII. MANUALS AND INTERNAL MANUALS

45. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. They also contained various costs and/or charges relating to the actual manufacture of corrugated containers. The manuals further contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals," "pricing manuals," "pricing procedures" or "estimating manuals." Whenever these manuals are hereinafter referred to,

they are specifically described as "internal manuals." Generally, the internal manuals were for internal use, and not available to the other defendants.

46. At various times, manuals containing formulae and schedules of charges, from the application of which a price estimate could be computed for most containers manufactured by them, were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Division) and Inland. Each of said manuals was made available to other manufacturers of, and customers for, corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Finding.

47. The manuals were variously referred to in the trade, among other things, as "price lists," "estimating and pricing manuals," or "estimating manuals."

48. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. In the trade, these charges were variously called, among other things, an "area charge," "base," "base price," "board base price," "board factor," "multiplier," "level" and "board level."

49. The manuals also contained various charges relating to the actual manufacture of corrugated containers. Before the actual manufacturing process could begin, it was necessary to set up the production machinery to accommodate the particular specification, such as style, dimensions, printing, kind of joint,

etc., for each individual order and type of corrugated container. The manuals also contained a schedule of charges commonly called "set-up charges" to cover the cost of the setting up of the necessary machinery for the production of corrugated containers of various specifications.

50. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs, desirability of such business, and the anticipated profit involved. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(a) By application of the formulae and schedules of charges set forth therein;

(b) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein.

(c) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(d) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(e) By any combination of the applications referred to in subparagraphs (b) (c) and (d) hereof; or

(f) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several de-

fendants; and among the plants and customers of individual defendants.

51. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant having an internal manual or internal manuals used such internal manuals in approximately the same ways and under the circumstances described in Finding 50, and often along with one or more of the manuals referred to in Finding 50. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants.

52. If the same board level and set-up charge were used in computing a "manual" price for a corrugated container of particular specifications there would be, in most instances, little difference in the results of the computation, regardless of which manual was used in making the computation.

53. The actual price charged for corrugated containers was usually referred to in the trade as the "end price," which in most instances was different from any manual price referred to in Finding 52.

54. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants, such information was furnished only in terms of an end price.

55. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the re-

quest involved more than a few different container items.

56. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board.

57. Each defendant having its own "manual" or "internal manual," prepared the same, and any revisions thereof, independently and without any agreement or understanding with any other defendant.

58. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differed from the price or cost estimates for such container computed under internal manuals of other companies.

59. The great majority of sales of each defendant was made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 annexed to DX-1, and the Charts at pages 47 through 68 of DX-6, contain data illustrative of the foregoing for the several defendants for the period covered by the Complaint.

60. When Crown Zellerbach in 1957 prepared and issued its manual as described in Finding 46, it adopted, and for a period of months followed, a policy to adhere to said manual. During that period, no employee had authority to quote or charge prices lower than prices computed on the manual, and as a result Crown Zellerbach lost a great volume of business. It was compelled to abandon that policy to avoid losing all of its business. By cutting prices, it regained the business it lost.

VIII. THE FIBRE BOX ASSOCIATION

61. The Fibre Box Association, hereinafter called the "Association," was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers. The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky, and was known as the Southeastern Group. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group.

62. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association a weekly summary showing, in square feet, the quantity of corrugated and solid fibre shipments and the dollar value of these shipments. From this data, the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

63. An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These divisions and zone price trends, as well as aggregate shipment figures for each

member, were issued to each member approximately ten days after the close of each week, and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member. Due to the variety of the materials used and the great variety in construction of the containers, as well as differences in the "mix" due to seasonal factors, the indexes showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold.

64. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Findings 62 and 63. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the program agenda, and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting.

65. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished most recent price information when requested by a representative of another defendant.

66. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly.

IX. FINDINGS AS TO CONTAINER CORPORATION

67. In the trade, Container Corporation, after November 15, 1960, was sometimes known as "Mengel," but only for its Memphis, Tennessee, Nashville, Tennessee, Chattanooga, Tennessee, Lexington, Kentucky, and Winston-Salem, North Carolina, locations. Container Corporation acquired a stock interest in Mengel Company in 1954 and continued to increase its holdings of Mengel Common stock, owning approximately 69% by December 1955, and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960, Mengel Company was merged into Container Corporation.

68. Container Corporation, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

69. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

70. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested.

71. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales man-

agers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961, and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers.

72. The extent and frequency with which such information was requested and furnished varied among Container Corporation and the several other defendants and among the plants and customers of Container Corporation.

73. In the circumstances set forth in Findings 69 and 70, Container Corporation requested and/or furnished price information from and/or to each of the other defendants.

74. From time to time between 1958 and 1961, A. S. Clay, Sales Manager for the Winston-Salem Plant of Container Corporation, requested and furnished said price information. From time to time between 1955 and 1958, G. W. Colvin, when he was general manager of the Winston-Salem Plant of Container Corporation, and from time to time between 1961 and January 1963, when he was Southeastern Divisional Manager of Container Corporation, requested and furnished said price information.

75. As a general rule, pricing decisions were made by Container Corporation at the plant level, and the plant sales manager was primarily responsible for making price determinations. During the period between 1961 and January 1963, G. W. Colvin, Southeastern Divisional Manager, always communicated the price information he had received to the sales man-

ager of the specific plant and generally did not communicate any advice or instructions concerning the price to be charged by the sales manager, nor was he necessarily consulted by the sales manager concerning the price to be charged.

76. Container Corporation requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Container Corporation from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

77. Generally, it was the policy of G. W. Colvin, while Vice-President and Southeastern Divisional Manager for Container Corporation, not to cut a price that had been given to him. However, he testified that he knew of no such Container Corporation policy and that there were instances when Container Corporation had cut prices after obtaining price information from competitors, and he knew that there were some occasions when Container Corporation had its prices cut by competitors after giving price information to them. A. S. Clay had no rule, general practice, personal principle, or personal policy concerning the prices to be charged or quoted after he had received price information from competitors, and in each instance, he made the price determination himself.

78. When a Container Corporation plant sales manager requested and received price information as described in Finding 69, the sales manager used the information along with Container Corporation's internal manual, which was a cost rather than a sales price

manual, as well as his other market information, to help him determine whether he was interested in obtaining the business, and what price he would charge or quote that customer. The plant sales manager had no set policy with regard to submitting a quotation to a customer at a price lower than that which he had learned from a competitor. In determining his prices, each sales manager attempted to get as much as he could within reason. The sales manager felt no obligation with regard to a competitor who had furnished price information to him, nor was such obligation ever expressed to the sales manager by such a competitor.

79. In all instances, the determination as to the price to be charged or quoted by Container Corporation was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Container Corporation exercised its own business judgment.

80. As earlier stated, Container Corporation stopped requesting or furnishing price information in January 1963. A study of Container Corporation's analyzed prices at its plants shows that in the nine-month period from January to October 1963, average analyzed prices were substantially the same as the average analyzed prices at its plants in the nine-month period immediately preceding January 1963. Moreover, the range between the highest and lowest prices in each of its plants in the nine-month period before January 1963 was approximately the same as the range in those plants in the nine-month period from January to October 1963.

81. Container Corporation's price trends differed from those of each of its competitors, and there is no parallel between them.

82. Container Corporation's price trends also varied

from plant to plant, as shown by comparing the price trends of its plants for the years 1955 to 1963.

83. Container Corporation's prices also varied from month to month throughout the period covered by the Complaint.

X. FINDINGS AS TO ALBEMARLE

84. Albemarle, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Regis, although not necessarily at all times or in all areas or for all purchasers.

85. On those occasions when Albemarle considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

86. When Albemarle received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished, it was accurate.

87. The extent and frequency with which such information was requested or furnished varied among Albemarle and the several other defendants.

88. In the circumstances set forth in Findings 85 through 87, Albemarle requested and/or furnished price information from and/or to each of the other defendants, except Dixie of North Carolina, International, St. Joe and St. Regis.

89. The price information furnished by Albemarle related to prices charged customers in actual sales or prices actually quoted to customers.

90. From time to time, Anthony J. Bagley, President of Richmond Container from 1957 to September 9, 1959, and Division Manager of Albemarle after such date, and M. F. Dozier, Sales Manager of Richmond Container to September 9, 1959, and Division Sales Manager of Albemarle after such date, on occasion requested and furnished said price information.

91. Albemarle requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Albemarle from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

92. In all instances, the determination as to the price to be charged or quoted by Albemarle was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Albemarle exercised its own business judgment.

93. Albemarle's price trends differed from those of each of its competitors, and there is no parallel between them.

XI. FINDINGS AS TO CAROLINA

94. Carolina, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

95. On those occasions when Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

96. When Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

97. The extent and frequency with which such information was requested or furnished varied among Carolina and the several other defendants and among the customers of Carolina.

98. In the circumstances set forth in Findings 95 through 97, Carolina requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

99. There is no evidence that the price information furnished by Carolina related to prices quoted upon which an actual order had not at that time been received from the customer.

100. Carolina furnished price information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

101. From time to time, C. T. Ingram, Vice-President and General Manager of Carolina, and Carter Holbrook, Sales Manager of Carolina, on occasion requested and furnished said price information.

102. Carolina requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price infor-

mation received by Carolina from other defendants was taken into account and utilized by Carolina in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

103. In all instances the determination as to the price to be charged or quoted by Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Carolina exercised its own business judgment.

104. Carolina's price trends differed from those of each of its competitors, and there is no parallel between them.

105. Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XII. FINDINGS AS TO CONTINENTAL

106. After October 26, 1956, Continental, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

107. On those occasions after October 26, 1956, when Continental considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. When Continental received a request from another defendant for the most recent

price to a specific customer for corrugated containers, usually the information requested was furnished. Continental neither gave to nor received from St. Joe any price information.

108. The extent and frequency with which such information was requested or furnished varied among the plants and customers of Continental.

109. From time to time between October 26, 1956, and January 1, 1957, and between January 1960 and March 31, 1963, Robert Groner, Jr., as one of Continental's Sales Managers; and from and after January 1, 1962, Jehan B. Johnson, as one of Continental's Sales Managers; and between October 26, 1956, and May 15, 1962, William B. Beams, as one of Continental's Sales Managers, requested and furnished price information, as described in Finding 107.

110. Continental requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Continental from other defendants was taken into account and utilized by Continental in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

111. When Continental furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

112. In all instances, the determination as to the price to be charged or quoted by Continental was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged, or quoted, Continental exercised its own business judgment.

113. Continental's price trends differed from those of each of its competitors, and there is no parallel between them.

114. Continental's price trends also varied from plant to plant, as shown by comparing the price trends of its plants from the date it entered the corrugated container business to the date of the Complaint.

115. Continental's prices also varied from month to month throughout the period it was in the corrugated container business.

XIII. FINDINGS AS TO CROWN ZELLERBACH

116. Crown Zellerbach, in seeking business from the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

117. On those occasions when Crown Zellerbach considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

118. When Crown Zellerbach received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

119. The extent and frequency with which such information was requested or furnished varied among Crown Zellerbach and the several other defendants, and among the plants and customers of Crown Zellerbach.

120. In the circumstances set forth in Findings 117 through 119, Crown Zellerbach requested and/or furnished price information from and/or to each of the other defendants.

121. The price information furnished by Crown Zellerbach related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer, but only after such a quotation was in the hands of the customer.

122. From time to time, from and after November 1958, Gordon M. Clark, for a part of said time Sales Manager and later Resident Manager of the Greenville, South Carolina, plant of Crown Zellerbach, requested and furnished said price information.

123. Crown Zellerbach requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Crown Zellerbach from other defendants was taken into account and utilized by Crown Zellerbach in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

124. When Crown Zellerbach furnished price information to other defendants, it gave Crown Zellerbach an insight as to who was actively competing for a particular piece of business.

125. In all instances, the determination as to the price to be charged or quoted by Crown Zellerbach was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in

determining the price to be charged or quoted, Crown Zellerbach exercised its own business judgment.

126. Crown Zellerbach's price trends differed from those of each of its competitors, and there is no parallel between them.

127. Crown Zellerbach's prices varied from month to month throughout the period covered by the Complaint.

XIV. FINDINGS AS TO DIXIE AND DIXIE OF NORTH CAROLINA

128. Dixie and its subsidiary, Dixie of North Carolina, are engaged solely in the box business. They are not part of an integrated company which is also engaged in the paper mill business. The only other non-integrated defendants are Carolina and Tri-State. As an independent box maker, which had already paid a profit on the paper, and had to make its profit, if any, out of the box, it was particularly sensitive to price fluctuations which characterized the industry.

129. Dixie, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie of North Carolina, St. Joe and St. Regis, although not necessarily at all times or in all areas or for all purchasers. Dixie of North Carolina was not in competition with Albemarle, Crown Zellerbach, Inland, Miller, Dixie, St. Joe or St. Regis. It was in competition, in seeking business for the sale of corrugated containers, with each of the other ten defendants, although not necessarily at all times or in all areas or for all purchasers.

130. On those occasions when Dixie or Dixie of North Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was

usually requested from a defendant then supplying that customer with corrugated containers.

131. When Dixie or Dixie of North Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

132. The extent and frequency with which such information was requested or furnished varied among Dixie and the several other defendants, and among Dixie of North Carolina and the several other defendants. During differing intervals of time, Dixie did not request from or furnish such information to certain competitors.

133. H. L. Mitchell, Jr., was President of Dixie and Dixie of North Carolina. One of his purposes in seeking such information was to verify the accuracy of information secured from customers by salesmen of Dixie.

134. Mitchell found that some of the information furnished by competitors upon request was inaccurate.

135. The price information furnished by Dixie in most instances related to a price charged a customer in an actual sale. On occasion Dixie furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. The price information requested and/or furnished by Dixie of North Carolina was "the last price he [the competitor of Dixie of North Carolina] got for the item or order."

136. In the circumstances set forth in Findings 130 and 131, Dixie and Dixie of North Carolina requested and/or furnished price information from and/or to each of the other defendants with which it competed.

137. From time to time, Mitchell, President of defendant Dixie, requested and/or furnished said price information.

138. From time to time, Joseph S. Schwind, Sales Manager for Dixie of North Carolina, requested and/or furnished said price information.

139. Mitchell gave competitors the most recent price to a specific customer with the hope that the competitor would not cut any more than necessary to get the business.

140. Mitchell had a policy of not calling the competition if he was going to cut a price; his experience was that some competitors would immediately reduce a price after answering an inquiry from Mitchell.

141. Dixie and Dixie of North Carolina requested price information from other defendants in order to aid them in making informed pricing and marketing decisions. Price information received by them from other defendants was taken into account and utilized by each of them in individually determining the prices to be charged or quoted by them in the same manner, to the same extent, and with the same effect as price information which they usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

142. In all instances, the determination as to the price to be charged or quoted by Dixie or Dixie of North Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Dixie and Dixie of North Carolina exercised their own business judgment.

143. Dixie's price trends and Dixie of North Carolina's price trends differed from those of each of their competitors, and there is no parallel between them.

144. Dixie's prices and Dixie of North Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XV. FINDINGS AS TO INLAND

145. Inland, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

146. On those occasions when Inland considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

147. When Inland received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

148. The extent and frequency with which such information was requested or furnished varied among Inland and the several other defendants, and among the plants and customers of Inland.

149. In the circumstances set forth in Findings 146 through 148, Inland requested and/or furnished price information from and/or to each of the other defendants.

150. From time to time, during the period covered by the Complaint, Frank M. Talbot, Southern Region Sales Manager for Inland, and Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, requested and furnished said price information.

151. In a written statement issued under date of

July 14, 1961, Inland's policy with respect to requesting and furnishing price information from and to other manufacturers of corrugated containers was set forth. It was binding upon all of its Sales Managers, including the said Barnell E. Roberts and Frank Talbot. Such policy was unilaterally and independently adopted by Inland. Such policy, and the deposition testimony of said Roberts and Talbot, establish that:

(a) Inland's purpose in the requesting and furnishing of price information was to enable it to be better informed in making price determinations.

(b) Its policy in this regard was in reliance upon, and believed by Inland to have been contemplated by, the aforementioned consent decree.

(c) Inland's policy was to request price information from another manufacturer if needed to make an intelligent price decision, and if such information was not obtainable from some other source. Such information was received usually and ordinarily from the purchaser. In some cases, such information was sought to verify a claim of a purchaser (who was attempting to have Inland reduce its price) that another supplier had reduced its price, in circumstances in which the salesmen doubted the reliability of such claim.

(d) Price information so received from another manufacturer was taken into account by Inland's Sales Managers in the same manner and with the same effect as like information usually and ordinarily received from the purchasers, provided the price information received from purchasers was considered reliable.

(e) In a situation in which Inland had a contract with a customer, who was then also being supplied by other manufacturers and during a

period when prices had been low for years, and the customer reported that another supplier in the account had reduced its prices, which report the Sales Manager believed doubtful, such Sales Manager would attempt to verify such report with such other supplier because he did not desire to reduce Inland's prices any lower than in fact the prices had been lowered as represented by the customer.

(f) Said policy authorized Inland's Sales Managers to furnish price information requested by other manufacturers within the limits prescribed for requesting such information. Whether to furnish such information upon request was a matter of individual decision by the Sales Managers. It was believed by them that it served Inland's self-interest to furnish such information upon request because they believed that they could not obtain price information from another manufacturer unless they usually furnished price information when requested.

(g) Said policy and Inland's practice thereunder was to request and furnish only the price of the most recent past sale.

152. When Inland furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

153. In all instances, the determination as to the price to be charged or quoted by Inland was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Inland exercised its own business judgment.

154. Inland's price trends differed from those of each of its competitors, and there is no parallel between them.

XVI. FINDINGS AS TO INTERNATIONAL

155. International, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

156. Two employees of International were called by plaintiff to testify on deposition, Edward Agar, from 1948-1957 manager of International's Container Division plant in Spring Hill, Louisiana, and since 1957 manager for the Southern Region of the Company's Container Division, and Hugh L. Reid, for the past 16 years, general manager of International's Container Division plant at Georgetown, South Carolina.

157. During the period 1955 to 1963, at times purchasing agents attempted to persuade International to lower its prices by advising International's sales representatives that its prices were too high when compared with those of other suppliers, and offered International the chance to meet a lower price in order to obtain or retain the business. Sometimes the purchasing agent identified the other supplier and price. Sometimes the price information supplied by the purchasing agent was incomplete, inaccurate, or misleading. On occasion, in the period prior to about June 1962, International made telephone calls to other suppliers to verify the information as to past prices charged which had been supplied by the purchasing agent.

158. Communication of price information by International to other suppliers of corrugated containers occurred without any pattern or regularity, and varied from period to period. Frequency ranged from about 10 or 12 calls a month to about 2 or 3 calls a month, in-

cluding those made as well as received, with many days without any calls, and on some occasions 2 or 3 a day.

159. International had 23 salesmen in the Southeast making an average of 4 to 5 calls daily on customers and potential customers. In other words, International's salesmen in soliciting business made on the average 92 to 100 calls a day, or 1800 to 2000 calls a month, on purchasers of corrugated containers who bought on a spot or short-term basis covering immediate or near-term requirements. In 1962, International had 449 customers in the Southeast out of more than 10,000 potential customers.

160. Agar had broad administrative responsibilities for a number of plants, including administration, production, sales and personnel, and did not have any direct pricing responsibility. Accordingly, he had no files showing International's prices, and on the infrequent occasions when he was asked for such information by a competitor he obtained it from the plant manager. While Reid had sole pricing authority for the Georgetown plant, and had files showing past prices charged by International, he had many other duties in operating the plant and spent only a minor portion of his time in determining prices.

161. In the circumstances set forth in Findings 157 through 160, and in Findings 162 through 169, International requested and/or furnished price information from and/or to each of the other defendants, except Albemarle and St. Joe. One of International's employees, Reid, testified that he was not sure he had ever, in the eight-year period in question, communicated price information to five of the defendants, and the other International employee, Agar, testified that he did not know four of the 17 other defendants. As to the eight of the defendants about which he was

questioned, he could not recall any incident when he gave or received any price information from them.

162. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

163. International requested price information on past transactions from another supplier at times when International had been invited by a customer to meet the price of such other supplier.

164. When offered the opportunity by a customer to meet the price of another supplier, International sought information as to past prices charged by such other supplier to verify the customer's information about such supplier's price in those instances where International wanted to make certain it was a real price and the circumstances justified International making an effort to obtain the business of the customer.

165. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested.

166. In responding to specific requests for price information on past transactions by other suppliers of corrugated containers, International furnished only end prices for the particular corrugated box as to which inquiry was made.

167. In June 1962, International decided that it would no longer furnish price information to, or request such information from, other suppliers of cor-

rugated containers. While no formal announcement was made of such decision, those who called requesting information were informed that such information would not be furnished.

168. During the time when International furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

169. International requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. The price information received by International from other defendants was taken into account and utilized by International in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

170. There is no evidence that any employee of any defendant ever discussed with any employee of International the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

171. As one of the factors in computing a price to offer or charge a customer, International on all occasions used its own internal estimating manual. International's manual was prepared and revised independently by it without any agreement or understanding with any other defendant. International did not give its manual to any competitor or customer but retained

it for its own use. International did not discuss its manual, or its preparation or revision, with any competitor.

172. International had no manuals of its competitors, except those of National Container Company and Gaylord Container Corporation, which had been obtained from customers of International. On infrequent occasions, in the period about 1958-1960, with respect to accounts which were then being sold by Gaylord, reference was made to the Gaylord manual as an added aid with other factors in helping the plant manager make up his mind as to the price he would quote the customer. If in those accounts the price of a particular container was less when computed on the Gaylord manual than on International's internal manual, and this was business which Reid desired to retain or obtain based on many other factors as to the desirability of the business, he would take into consideration the price developed from the Gaylord manual. In a period sometime before 1958, the National Container manual was referred to by Reid in the same way in competing for business on accounts which were being supplied by National Container Corporation, although with less frequency.

173. There was no relationship in the prices developed on International's internal manual and on Gaylord's manual. With respect to some containers, International's manual would develop a higher price; with respect to others, it would develop a lower price.

174. In all instances, the determination as to the price to be charged or quoted by International was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, International exercised its own business judgment.

175. International increased its capacity to compete by opening new plants in other market areas in the Southeast. In 1957, a new plant was opened in Auburndale, Florida, and in 1962, a new plant was opened in Statesville, North Carolina.

176. During the period 1955 to 1963, the trend of International's prices was downward, while at the same time costs had increased. International continually instructed its employees to attempt to improve earnings by obtaining the highest possible prices for corrugated containers.

177. International lost customers to, and gained customers from, other suppliers of corrugated containers on the basis of price. In 1960, out of 408 separate accounts in the Georgetown and Auburndale plants, 162 accounts, or almost 40%, were totally new accounts gained by these plants; while 64 accounts represented customers lost. Of the 408 accounts in 1960, 110 represented customers where, in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1960, a total of 336 out of 408 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1961, out of 447 separate accounts at these same plants, 135 accounts, or 30%, were totally new accounts; 96 were lost. Of the 447 accounts in 1961, 143 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus, in 1961, a total of 384 out of 447 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1962, out of 449 separate accounts at

those plants, 116 accounts, or 28%, were totally new accounts; at the same time more than 28% of the accounts, or 114, were lost. Of the 449 accounts in 1962, 184 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1962, a total of 414 out of 449 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). These figures are representative of the entire period covered by the Complaint.

178. International's price trends differed from those of each of its competitors, and there is no parallel between them.

179. International's price trends also varied from plant to plant, as shown by, comparing the Georgetown and Auburndale plants' price trends for 1961 and for 1955-1963.

180. International's prices also varied from month to month throughout the period covered by the Complaint.

181. As earlier stated, International stopped requesting or furnishing price information in June 1962. A study of International's analyzed prices at its Auburndale, Florida, and Georgetown, South Carolina, plants shows that in the twelve-month period after June 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June 1962. Moreover, the range between the highest and lowest prices in the Georgetown and Auburndale plants in the year before June 1962, was approximately the same as the range in those plants in the year following June 1962.

XVII. FINDINGS AS TO MEAD

182. Mead, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not at all times or in all areas or for all purchasers.

183. On those occasions when prior to 1961, and thereafter under the circumstances set forth in Findings 186 and 187:

(a) Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

(b) When Mead received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

(c) During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

184. The extent and frequency with which such information was requested or furnished varied among Mead and the several other defendants, and among the plants and customers of Mead.

185. The price information which Mead requested and/or furnished, as described in Findings 183 and 184, was requested and/or furnished from and/or to each of the other defendants, and related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer.

186. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers. In the fall of 1961, the Containers Division of Mead, at the request of its Southeastern Regional Sales Manager, Virgil C. Shutze, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally. Thereafter, said Virgil C. Shutze relaxed said prohibition to some extent to District Sales Managers under his supervision. Said Virgil C. Shutze, as Southeastern Regional Sales Manager for Mead's Containers Division, had jurisdiction over Florida, Georgia and Tennessee. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead's Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants in the circumstances herein described. In the spring of 1962, Mead called its Southeastern Regional Sales Manager and the District Sales Managers of Mead's Containers Division to Mead's head office in Dayton, Ohio, at which Mead's policy was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced. This has been Mead's policy since the spring of 1962.

187. In the fall of 1961, Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers

were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding 186, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels in accounts for which Mead was competing.

188. A study of Mead's analyzed prices at its Atlanta, Georgia, Durham, North Carolina, and Miami, Florida, plants shows that in the twelve-month period after April, 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June, 1961.

189. On those occasions when Mead did seek and receive price information from another defendant:

(a) Mead sought such price information only when no other source of such information was available, or when it had obtained recent price information from the purchaser and desired to ascertain the accuracy of such information.

(b) Mead requested such price information for the aforesaid reasons in order to aid it in making informed pricing and marketing decisions. The price information received by Mead from other defendants was taken into account

and utilized by Mead in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect, as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

(c) Many factors influenced Mead's decision in making a price determination, and in making such a decision, Mead exercised its own business judgment. A price believed to have been most recently charged or quoted by a competitor, when Mead believed it had sufficient basis for such belief, was only one of many factors influencing Mead's pricing decision.

(d) In many instances, depending upon particular circumstances, Mead would quote lower or higher prices than that indicated by its information as to the most recent price charged the customer, from whatever source the information was obtained; and in all instances the determination as to the price to be charged or quoted was Mead's individual decision.

190. On those occasions prior to 1961, and thereafter, under the circumstances set forth in Findings 186 and 187, when competitors requested price information, Mead usually furnished price information to that competitor, and hoped that doing so would prompt that competitor to furnish price information to Mead on those subsequent occasions when Mead considered it necessary to request price information.

191. During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

192. Mead's price trends differed from those of each of its competitors, and there is no parallel between them.

193. Mead's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

194. Mead's prices also varied from month to month throughout the period covered by the Complaint.

195. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Mead exercised its own business judgment.

XVIII. FINDINGS AS TO MILLER

196. Miller, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

197. On those occasions when Miller considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

198. When Miller received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

199. The extent and frequency with which such information was requested or furnished varied among Miller and the several other defendants.

200. In the circumstances set forth in Findings 197 through 199, Miller requested and/or furnished price

information from and/or to each of the other defendants, except St. Joe and St. Regis.

201. From time to time, Harold P. Kyle, as President of Miller, and William M. Noftsinger, as Vice-President and Sales Manager of Miller, gave and received said price information.

202. Miller requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Miller from other defendants was taken into account and utilized by Miller in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

203. When Miller furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

204. When Miller furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

205. In all instances, the determination as to the price to be charged or quoted by Miller was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Miller exercised its own business judgment.

206. Miller's price trends differed from those of each of its competitors, and there is no parallel between them.

XIX. FINDINGS AS TO OWENS-ILLINOIS

207. Owens-Illinois, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

208. On those occasions when Owens-Illinois considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

209. When Owens-Illinois received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

210. The extent and frequency with which such information was requested or furnished varied among Owens-Illinois and the several other defendants and among the plants and customers of Owens-Illinois.

211. In the circumstances set forth in Findings 208 through 210, Owens-Illinois requested and/or furnished price information from and/or to each of the other defendants.

212. There is no evidence that the price information furnished by Owens-Illinois related to prices quoted upon which an actual order had not at that time been received from the customer.

213. From time to time, from and after October,

1961, Thomas M. Cox, Jr., General Manager of the Southeastern Region of the Forest Products Division of Owens-Illinois, and from time to time, from and after the Spring of 1958, Kenneth E. Rosenbaum, for part of said time Sales Manager and later General Manager of the Salisbury, North Carolina, plant of Owens-Illinois, on occasion requested and furnished price information.

214. Owens-Illinois requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Owens-Illinois from other defendants was taken into account and utilized by Owens-Illinois in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

215. When Owens-Illinois furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

216. When Owens-Illinois furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

217. In all instances, the determination as to the price to be charged or quoted by Owens-Illinois was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged or quoted, Owens-Illinois exercised its own business judgment.

218. Owens-Illinois' price trends differed from those of each of its competitors, and there is no parallel between them.

219. Owens-Illinois' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

220. Owens-Illinois' prices also varied from month to month throughout the period covered by the Complaint.

XX. FINDINGS AS TO ST. JOE

221. St. Joe, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie, Dixie of North Carolina, and Miller, although not necessarily at all times or in all areas or for all purchasers.

222. On those occasions when St. Joe considered it necessary to ascertain the accuracy of a customer's report of a price charged by another defendant, or to ascertain from another defendant the most recent price charged to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

223. When St. Joe received a request from another defendant for the most recent price charged to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

224. St. Joe requested or furnished price information from or to other defendants infrequently.

225. In the circumstances set forth in Findings 222 through 224, St. Joe requested and/or furnished price

information from and/or to Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia, and Weyerhaeuser.

226. St. Joe neither furnished nor requested any price information, except a price charged the customer in an actual sale. No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices.

227. When St. Joe requested or furnished price information, it was done exclusively by telephone.

228. St. Joe would request price information from another defendant only after St. Joe had analyzed the business and determined that it was desirable from the standpoint of type of linerboard required, contribution to plant product mix, customer's credit standing, and other relevant factors. St. Joe then would not request price information from another defendant unless it did not have enough information itself to determine a price, had not received price information from a customer, and did not have its own past price record for that customer.

229. St. Joe requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by St. Joe from other defendants was taken into account and utilized by it in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

230. When St. Joe furnished another defendant, upon request, the most recent price charged to a spe-

cific customer, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant. When St. Joe furnished price information to another defendant, St. Joe had no assurance that it would be able to obtain similar price information if it requested it on another occasion.

231. St. Joe had no company policy as to furnishing or requesting price information to or from other defendants. The entire authority for pricing containers was left to its General Managers for its corrugated container plants at Port St. Joe, Florida, and Birmingham, Alabama. No one at its corporate headquarters in Jacksonville, Florida, had any responsibility for pricing specific customers, nor did they receive any reports from the General Managers showing any prices for specific customers.

232. When St. Joe furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

233. In all instances, the determination as to the price to be charged or quoted by St. Joe was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Joe exercised its own business judgment.

234. St. Joe's price trends differed from those of each of its competitors, and there is no parallel between them.

235. St. Joe's price trends varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

236. St. Joe's prices also varied from month to month throughout the period covered by the Complaint.

XXI. FINDINGS AS TO ST. REGIS

237. St. Regis, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Albemarle, Dixie, Dixie of North Carolina and Miller, although not necessarily at all times or in all areas or for all purchasers.

238. On the occasions when St. Regis considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

239. When St. Regis received a request from another defendant for the most recent price to a specific customer for corrugated containers, such information was sometimes, but not always, furnished.

240. The extent and frequency with which such information was requested or furnished varied among St. Regis and the several other defendants and among plants and customers of St. Regis.

241. In the circumstances set forth in Findings 237 through 240, St. Regis requested and/or furnished price information from and/or to each of the defendants, except Albemarle, Dixie, Dixie of North Carolina, and Miller.

242. The price information requested or furnished by St. Regis related to prices charged customers in completed sales in which the customer had been billed.

243. From time to time, from and after October 1958, W. L. Diggs, as Southern District Manager for St. Regis, requested or furnished price information as described in Finding 242.

244. Price information received by St. Regis' officers or employees from other defendants was given consideration in determining the prices to be charged or quoted by St. Regis in the same manner, and with the same effect, as price information received from customers, provided the price information received from customers was considered reliable.

245. When St. Regis furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

246. In all instances, the determination as to the price to be charged or quoted by St. Regis was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Regis exercised its own business judgment.

247. St. Regis' price trends differed from those of each of its competitors, and there is no parallel between them.

248. St. Regis' price trends varied from plant to plant, for 1955-1963, as shown by comparing the price trends of its plants.

249. St. Regis' prices also varied from month to month throughout the period covered by the Complaint.

XXII. FINDINGS AS TO TRI-STATE

250. Tri-State, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

251. On those occasions when Tri-State considered it necessary to ascertain the accuracy of a customer's

report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

252. When Tri-State received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and the information furnished was accurate.

253. In the circumstances set forth in Findings 251 and 252, Tri-State requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

254. From time to time, during the period covered by the Complaint, Alan McDonald, Sales Manager for Tri-State, requested and furnished said price information.

255. The price information requested and/or furnished by Tri-State related to consummated sales.

256. Price information received by Tri-State from other defendants was taken into account by Tri-State in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

257. When Tri-State furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

258. In all instances, the determination as to the price to be charged or quoted by Tri-State was its

individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Tri-State exercised its own business judgment.

259. Tri-State's price trends differed from those of each of its competitors, and there is no parallel between them.

260. Tri-State was cognizant of the existence of the consent decree referred to in Findings 39 through 44 hereof, and relied upon the terms thereof.

XXIII. FINDINGS AS TO UNION-CAMP

261. Union-Camp, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

262. On those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. However, during the period from July 16, 1963, to October 10, 1963 (during which period Union-Camp was making a general increase in prices to its customers), Union-Camp neither requested nor furnished such price information.

263. When Union-Camp received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

264. The extent and frequency with which such in-

formation was requested or furnished varied among Union-Camp and the several other defendants and among the plants and customers of Union-Camp. Union-Camp, at its Spartanburg plant, received four or five requests per week.

265. In the circumstances set forth in Findings 261 through 264, Union-Camp requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

266. The price information furnished by Union-Camp was the price at which it had sold or quoted to a specific customer. The plant managers of Union-Camp were authorized to give such price information at the request of a competitor.

267. During the time when Union-Camp furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

268. The price information received by Union-Camp from other defendants was taken into account by Union-Camp in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

269. Lewis A. Wulff, from time to time, from and after July 1, 1963, until July 10, 1963, and from October 10, 1963, until October 14, 1963, as Southeastern Regional Sales Manager for Union-Camp; Frank B. Grimes, from January 1, 1960, until July 16, 1963, as Sales Manager of the Spartanburg, South Carolina, plant of Union-Camp; John I. Pritchett, during part or all of the period from December 1, 1959, until July 16, 1963, as an employee of Union-Camp, and J. E.

Faulkner, Jr., from December 1, 1959, until July 16, 1963, as Sales Manager of the Jamestown plant of Union-Camp, requested and furnished said price information.

270. When Grimes, and the other Union-Camp plant managers referred to in Finding 269, furnished most recent price information to a competitor, they were following a Union-Camp policy which permitted its plant managers to give this information in the hope that, when they needed it, the competitor, in turn, would furnish such information. Grimes believed he could not expect to receive such information unless he gave it. In addition, by furnishing such information to another defendant, Union-Camp knew the source of some of the competition it would meet for a particular piece of business.

271. Union-Camp requested most recent price information to enable it to determine whether, in a particular account and at a particular time, it wanted to meet a competitor's price, quote higher, or quote lower.

272. In all instances, the determination as to the price to be charged or quoted by Union-Camp was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Union-Camp exercised its own business judgment.

273. Union-Camp's price trends differed from those of each of its competitors, and there is no parallel between them.

XXIV. FINDINGS AS TO WEST VIRGINIA

274. West Virginia, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

275. On those occasions when West Virginia considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

276. When West Virginia received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

277. The extent and frequency with which such information was requested or furnished varied among West Virginia and the several other defendants and among the plants and customers of West Virginia.

278. In the circumstances set forth in Findings 275 through 277, West Virginia requested and/or furnished price information from and/or to each of the other defendants.

279. The price information requested and/or furnished by West Virginia related to prices charged customers in actual sales, or to prices quoted upon which an actual order had not at that time been received from the customer.

280. From time to time, during the period covered by the Complaint, David B. Orcutt, Jr., Richmond District Sales Manager of West Virginia, requested and furnished price information. From time to time, from and after November, 1959, Joseph T. Piemonte, Sales Manager of the Richmond Region of West Virginia, furnished to three competitors information relating to prices charged customers in completed sales only, but he did not request any price information from others.

281. West Virginia requested price information

from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by West Virginia from other defendants was taken into account by West Virginia in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

282. When West Virginia furnished another defendant, upon the latter's request, price information, it did so hoping that such information would be given to it on those occasions when it might want such information.

283. When West Virginia furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

284. In all instances, the determination as to the price to be charged or quoted by West Virginia was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, West Virginia exercised its own business judgment.

285. West Virginia's price trends differed from those of each of its competitors, and there is no parallel between them.

286. West Virginia's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

287. West Virginia's prices also varied from month to month throughout the period covered by the Complaint.

XXV. FINDINGS AS TO WEYERHAEUSER

288. Weyerhaeuser, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

289. On those occasions when Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

290. When Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

291. The extent and frequency with which such information was requested or furnished varied among Weyerhaeuser and the several other defendants and among the plants and customers of Weyerhaeuser.

292. In the circumstances set forth in Findings 289 through 291, Weyerhaeuser requested and/or furnished price information from and/or to each of the other defendants.

293. The price information requested and/or furnished by Weyerhaeuser related to prices charged customers in actual sales.

294. From time to time, from and after the middle of August 1961, to October 13, 1963, George W. Elliott, Jr., Sales Manager of the Charlotte Plant of Weyerhaeuser, and from time to time, from and after June 1962, to October 13, 1963, Ivan D. Wood, Vice-President and Manager of the Shipping Container

Division of Weyerhaeuser, on occasion requested and furnished said price information.

295. Weyerhaeuser requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Weyerhaeuser from other defendants was taken into account and utilized by Weyerhaeuser in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

296. When an employee of Weyerhaeuser made his individual decision to furnish another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, he did so believing that it was unlikely that he could obtain price information from such other defendant, on those occasions when he might consider it necessary to request such information, unless he furnished price information when requested by such other defendant.

297. When Weyerhaeuser furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only, pursuant to its own specific request.

298. In all instances, the determination as to the price to be charged or quoted by Weyerhaeuser was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Weyerhaeuser exercised its own business judgment.

299. Weyerhaeuser's price trends differed from those of each of its competitors, and there is no parallel between them.

300. Weyerhaeuser's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

301. Weyerhaeuser's prices also varied from month to month throughout the period covered by the Complaint:

XXVI. FINDINGS WITH RESPECT TO "OTHER CONDUCT" OF VARIOUS DEFENDANTS

302. In 1955, there was a meeting at the Plaza Hotel in New York, New York, at which representatives of defendant Dixie and of other non-defendant corrugated container manufacturers were present. Anthony J. Bagley, then President of Richmond Container Company (which was acquired by defendant Albemarle four years later), announced that his Company would increase its prices to American Tobacco Company. After the meeting, Bagley increased his prices to American Tobacco Company, but no one else did, and Bagley thereafter withdrew his price increase. Bagley testified that for all intents and purposes the people who attended the meeting could have stayed home.

303. Early in 1956, corrugated container manufacturers from the Baltimore area solicited business in the eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the eastern part of Virginia were then paying for similar corrugated containers. Miller, Dixie, Robert Gair Company, prior to its acquisition by Continental, Richmond Container Corporation, prior to its acquisition by Albemarle, and possibly

West Virginia, endeavored to ascertain the localities in eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. These matters were discussed by telephone and at a meeting. Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albemarle) each adopted lower nominal board factors for eastern Virginia than for western Virginia.

304. Prior to July 1, 1959, each defendant included in its prices to many of its customers a set-up charge. (Finding 49) of \$15.00 for regular slotted cartons. Thereafter, and continuing into 1960, each defendant sought to increase its set-up charge for such cartons by \$10.00 to many of its customers. By July 1960, each defendant included in its prices to many of its customers a set-up charge of \$25.00 for regular slotted cartons. However, throughout such period, the amount of such set-up charges varied among the several defendants and among the plants and customers of individual defendants, and in many instances the amount of set-up charge sought or received, if any, was less than the aforesaid amounts.

305. In or about May or June 1959, there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation (a company which then had been partially acquired by Union-Camp in March 1959, and later fully acquired in September 1959, and merged into Union-Camp in December 1959), upon entering the meeting, announced that

their company was increasing its set-up charge from \$15.00 to \$25.00 and thereupon left the meeting.

306. On July 29, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller and Owens-Illinois were present, and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges.

307. The representative of Owen-Illinois present at the meetings at the Sir Walter Hotel and Dimizzio's Restaurant was Kenneth E. Rosenbaum.

308. The representative of Crown Zellerbach present at the meetings at the Sir Walter Hotel and at Dimizzio's Restaurant was Gordon M. Clark.

309. The representative of Container Corporation present at the meeting at Dimizzio's Restaurant was Adolphus S. Clay; the representative of Miller present was William M. Noftsinger, and the representative of Carolina present was Carter Holbrook.

310. Joseph Schwind, Sales Manager for Dixie of North Carolina, attended the meeting at Dimizzio's Restaurant. At that time he had just started as Sales Manager in Morganton, North Carolina (home office of Dixie of North Carolina), and his purpose in going was to meet his competitors. H. L. Mitchell, President of Dixie, also attended the meeting at Dimizzio's Restaurant. His primary purpose in attending was to bring Schwind and introduce him to as many of his competitors as possible.

311. H. L. Mitchell, President of Dixie, immediately after a Fibre Box Association meeting, in a conversation with Anthony J. Bagley, representing Richmond Container, suggested that Richmond Container raise its prices to Burlington Industries.

313. Prior to July 27, 1961, Inland and Crown Zellerbach, among others, had announced general increases in their respective prices for corrugated containers in varying amounts, effective on varying dates. Subsequent to these public announcements, a regularly scheduled meeting of Zones 10 and 11 of the Fibre Box Association was held on July 27, 1961, at which legal counsel was present. On July 31, 1961, Lee J. Ross, then manager of the Atlantic plant of Crown Zellerbach, wrote an inter-office memorandum to his superior in that company as follows:

As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco:

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container	Union Bag
Dixie Container	Maxwell Bros.
Mead	H.&D.
Mengel	Weyerhaeuser
Continental Can	International Paper

Not in attendance:

Owen-Illinois	Container Corp.
Carolina Container	St. Regis
Tri-State	Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full.

312. In August 1959, a meeting of representatives of some corrugated container manufacturers was held at the Raleigh Hotel in Richmond, Virginia. David B. Orcutt, West Virginia's District Sales Manager for the Richmond District, invited to the meeting a representative of each manufacturer that he believed was then supplying corrugated containers to Hygrade Packing Corporation. In response, representatives of Continental, Dixie, Miller, and Richmond Container Corporation, which companies, with the exception of Continental, were then supplying corrugated containers to Hygrade, met at the Raleigh Hotel, as aforesaid. Sometime previously, West Virginia had publicly announced a general increase in its corrugated container prices of approximately 10%. Some of Hygrade's suppliers named had been advised by Hygrade that West Virginia had reduced its prices to Hygrade, and had inquired of West Virginia as to whether that report was correct in view of West Virginia's previously announced price increase policy. The meeting was called to answer these inquiries at one time. At this meeting, Mr. Piemonte, of West Virginia, explained to those present that West Virginia had not changed its previously announced general policy, but that when it had negotiated with Hygrade, it was West Virginia's good judgment that its price to that customer should be reduced 5%. No statement was made at the meeting as to what any other suppliers of corrugated containers to that customer intended to do.

314. In 1960 or 1961, A. S. Clay, of Container Corporation, was told by the purchasing agent at the Drexel Furniture Company that Drexel had been charged prices by other suppliers which were lower than prices charged by Container Corporation. Clay requested and received from competitors information

as to the prices charged Drexel, which differed from information which Clay had received from Drexel. Subsequently, Clay asked employees of Tri-State, Owens-Illinois, and he believes International, if they had recently reduced prices to Drexel, and Alan McDonald of Tri-State said that he had reduced his prices to Drexel by roughly 3%. Because of this price competition, Clay had lost a great deal of his business in this account. Clay expressed his intention to place his prices in a competitive position based on information given him by the purchasing agent. Subsequently, Clay reduced his prices to Drexel 5%.

315. On August 8, 1961, Robert Groner, Jr., then Regional Sales Manager of the Southern District for Continental, advised Continental's district sales managers, including Continental's New Orleans Sales Manager, that lists containing the names of customers notified of a general 10% price increase "should be compiled and should be circularized fully, since this can be made public information." On August 11, 1961, David J. Bloom, a sales manager for Mead at its Atlanta, Georgia, plant, received from Continental's New Orleans sales office such a list. Bloom had not requested the list.

316. In or about February 1962, H. L. Mitchell of Dixie and representatives of Miller, Albemarle, Continental and West Virginia met in Mitchell's office, at the latter's invitation, after the paper mills had announced a price increase for linerboard, the basic raw material for corrugated containers. Mitchell assumes he made inquiry as to whether the others had increased, or were increasing, their prices to recover these increased costs. Prior to the meeting, Continental had increased its container prices and had announced that fact to its customers, and Continental's representative at the meeting so stated. Also, prior to the

meeting, West Virginia had made the decision to attempt to increase prices of containers to recover such increased cost, and its representative so stated at the meeting. "The meeting broke up as if it had not started." At about this same time, the other defendants attempted to increase prices in varying amounts to some corrugated container customers in an effort to recover their increased costs of linerboard.

317. H. L. Mitchell of Dixie believed that after some competitors had discontinued giving and receiving the most recent price charged or quoted to specific customers, the prices of corrugated containers, in some instances, deteriorated 40 per cent simply for lack of communication.

318. David B. Orcutt, Jr., was the representative of West Virginia who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, West Virginia had decided to attempt to increase its prices sufficiently to recover the increased cost of linerboard, as previously announced by the linerboard mills, and Orcutt stated at the meeting that West Virginia personnel had been instructed to do so. Orcutt did not know whether the other defendants whose representatives attended the meeting attempted to increase their prices.

319. Robert Groner, Jr., and Jehan B. Johnson were the representatives of Continental who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, Continental had publicly announced an increase in prices of its corrugated containers in order to absorb the increased cost represented by the rise in the price of linerboard. Since Continental's price increase could not hold if its competitors did not increase their prices, Johnson was interested in knowing what his competitors were doing or had been doing.

320. Harold P. Kyle and William M. Noftsinger were the representatives of Miller who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Kyle's purpose in attending the meeting was to learn his competitor's attitude toward passing on to customers the increase in the cost of linerboard.

321. Robert Groner, Jr., representative of Continental, on or about June 30, 1961, at a meeting of the Fibre Box Association attended by one or more of the other defendants and the Fibre Box Association's counsel, delivered a speech in which he stated Continental's intention to abide by the antitrust laws. Groner announced certain of Continental's sales policies, and stated that Continental would attempt to sell its product at a profit. He noted that one of the causes of unprofitable pricing was the deception practiced on salesmen by purchasing agents when those purchasing agents were asked the price which they were currently paying for corrugated containers. He said that, in view of this deception, his company would endeavor to determine the most recent price charged to a new customer before quoting blindly. Groner's speech made no reference to specific customers. Groner said that "anyone who has any real or imaginary problems with our firm can call me," and stated that such conversations would be "strickly [sic] legal according to the interpretation of the law by Malcolm White [Whyte]," the General Counsel of the Fibre Box Association.

322. Anthony J. Bagley met with competitors in the office of Herbert Mitchell, President of Dixie, on at least three occasions and discussed the price level of corrugated containers in the Richmond, Virginia, area. There is no evidence when these meetings occurred nor that any other defendant was present.

323. On various dates between July 24, 1961, and August 31, 1961, Continental, Container Corporation, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers, and succeeded in increasing prices to some of its customers in varying amounts. Continental had publicly announced its price increase prior to August 11, 1961. On August 24, 1961, Robert Groner, Jr., attended a Fibre Box Association meeting at which one or more of the defendants were present. Groner, who had a duty to gather market information for Continental, reported to his superior that "the feeling at this meeting was that the price increase . . . would probably hold." Groner instructed his district sales managers to make no deviations from Continental's previously announced increase without specific permission.

324. On one occasion, when Container Corporation received from Continental the most recent price which Continental had charged to a specific customer, Container Corporation analyzed Continental's price against Container Corporation's costs, determined that Container Corporation could charge less and still have a comfortable profit, and cut Continental's price. An employee of Continental complained to an employee of Container Corporation, but Continental continued giving price information to Container Corporation when such information was requested.

325. After a zone meeting of the Fibre Box As-

sociation, Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, stated in the presence of several representatives of other defendants that he was going to increase his prices to Spring Cotton Mills. Roberts said nothing further. Roberts had not decided to make this announcement prior to making it. No comment was made by any of the others present regarding the announcement. Roberts sought no agreement, and stated that he would make no agreement. He expected that the others would not increase their prices. They did not. Inland did and lost the business. Later Inland reduced its prices to get back into the account.

326. In or about 1961, Weyerhaeuser, at the request of Continental, furnished Continental the most recent price that Weyerhaeuser had charged a certain account. After obtaining this information, Continental quoted a more attractive price to this account and took the business from Weyerhaeuser. Weyerhaeuser naturally was unhappy that it no longer had the business. Subsequently, upon inquiry from Weyerhaeuser, Continental confirmed that it had taken the account at a lower price. Weyerhaeuser thereafter attempted to regain the account.

DISCUSSION

The issues for determination are whether, from the facts found, (1) the defendants, during the period covered by the Complaint, had an understanding or agreement to exchange information as to the most recent prices charged or quoted to specific customers, and (2) if so, during said period, did the defendants have a further understanding and agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers or minimizing the

amount of any price reductions to be offered to such customers. It is the contention of the plaintiff, if these two issues are resolved in the affirmative, that the concerted and reciprocal conduct of the defendants constitutes, as a matter of law, a combination or conspiracy in the restraint of trade in the sale of corrugated containers within the meaning of Section 1 of the Sherman Act.¹ If an unlawful trade conspiracy has otherwise been established, a further question is presented as to whether the provisions of the consent decree entered in the case of "United States of America, Plaintiff, against National Container Association, et al., Defendants," in the United States District Court for the Southern District of New York, Civil Action No. 8-318, constitutes a defense available to any of the defendants.

The plaintiff concedes that there is no evidence of an express agreement or understanding between or among any of the defendants to either exchange price information or to restrict price competition. It is contended, however, that, from the facts found, the Court may infer an agreement to exchange information as to the price most recently quoted or charged for corrugated containers, and that from such agreement, together with such facts, the Court may infer an agreement to restrict price competition. Since it is well established that a conspiracy can be inferred or implied from a concerted and collaborative course of action, plaintiff correctly asserts that an explicit agreement is not a necessary part of a Sherman Act

¹ Section 1 of the Sherman Act, 15 U.S.C. § 1, provides, in pertinent part, as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal . . ."

conspiracy. *United States v. General Motors*, 384 U.S. 127 (1966).

Unquestionably, during all or a part of the period covered by the Complaint, each of the defendants furnished to other defendants, upon request, the most recent price charged or quoted to specific customers for corrugated containers, and this was done with the implied understanding that by furnishing such information each defendant would, upon request, receive similar information. The evidence also permits the inference that each of the defendants knew that this practice was engaged in to some extent by other defendants. Since each defendant gave price information to other defendants with the expectation that the same kind of information would be furnished by the competitor, reciprocally, when requested, the plaintiff contends that a combination and conspiracy has been proved. The defendants, on the other hand, earnestly contend that the uncontested facts negate any inference of an agreement.

The Court is of the opinion that the plaintiff has failed to sustain its burden of proving facts from which an agreement to exchange price information may be inferred. Before determining the price to be quoted to a specific purchaser for corrugated containers, each defendant was naturally interested in all pertinent marketing information applicable to such account, and it was important to each manufacturer to have accurate information as to the price alternatives available to the purchaser. Usually, such information was obtained from the defendants' own records of prior sales, or from the purchaser involved. However, on occasions, purchasers furnished manufacturers with incomplete, inaccurate or misleading information as to prices offered by competing suppliers, and it was only on these occasions that a

competitor was consulted with respect to price information. The extent and frequency with which such information was requested or furnished varied among the plants and customers of each of the defendants. The defendants were at all times free to request from or furnish to competitors, or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was the individual decision of each defendant. At various times during the period covered by the Complaint, some of the defendants discontinued the practice altogether. Price information was furnished only in response to a specific request therefor, and was never volunteered. The price communication among the defendants was infrequent, since the usual means for obtaining such information was from a defendant's own records or from a customer. The undisputed fact that each defendant "usually" furnished price information on request disproves any agreed requirement that such information would always be furnished. There was a lack of uniformity in the substance and scope of price information furnished. Sometimes it was furnished in terms of end prices, and sometimes in terms of board levels. Some defendants furnished it both ways, while others furnished it in terms of an end price only. Some defendants furnished only a price which had been charged to a customer in a consummated sale, while others made no distinction between consummated sales and prices previously quoted.

The conceded freedom of each defendant to request from or furnish to competitors, or not request from or furnish to competitors, price information on corrugated containers, is the very antithesis of an agreement. Proof of a course of conduct by the defendants, or parallel business behavior, does not necessarily

require an inference or conclusion that a conspiracy actually existed. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954). The most that can be said about the conduct of the defendants in exchanging price information is that on *infrequent* occasions each of the defendants, during various periods, felt free to call upon competitors to *verify* price information given by purchasers, and by receiving such information, felt compelled to give similar information upon request. Since this was done with no regularity, and each defendant was at all times completely free to either furnish or not furnish such information, it cannot be said that the existence of any agreement or conspiracy should be inferred.

Even if the mere giving and receiving of price information could support an inference of an agreement or conspiracy to do so, this alone would not be a violation of the Sherman Act. The plaintiff concedes that if it had only charged in the Complaint that the defendants had agreed to exchange price information, it would have no case, and that the Complaint would be subject to dismissal. Thus, the plaintiff has the additional burden of showing that from such inferred agreement, the Court should further infer that there was an agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers, or minimizing the amounts of any price reductions to be offered to such customers.

In arguing that a preponderance of the evidence establishes that the defendants combined and conspired to exchange most recent prices charged or quoted to specific customers for the purpose and with the effect of maintaining identical price quotations to those customers, or minimizing the amount of any re-

duction in price to be offered, plaintiff points to the stipulated evidence that each defendant considered it beneficial to have the most recent prices charged or quoted to specific customers for corrugated containers by its competitors; that the price information thus obtained was utilized in making the determination as to what price would be quoted to the customer; that one of the defendants felt that such price information was important to the defendants to keep the market stable; that most defendants felt that such price information was needed to maintain prices and minimize any price competition that might otherwise exist; that some defendants hinted that the price information was used to get the best possible prices from their customers, and other evidence of similar import. The plaintiff also contends that the asserted freedom by recipients of price information to use their own discretion in setting prices is meaningless for the reason that a decision to quote a price other than identical, or marginally under, the price of the competitor, would be wholly irrational, if the recipient was interested in sharing the business. Plaintiff further asserts that if the direct evidence does not establish that the practice of the defendants in exchanging most recent prices charged or quoted to specific customers had the purpose and necessary effect of stabilizing prices and minimizing competition among defendants, the "other conduct" evidence relating to various defendants (Findings 302 through 326) makes such conclusion inescapable. It is not contended, however, that this "other conduct" evidence establishes a separate violation of the antitrust laws.

The record is barren of any evidence that any of the defendants were ever committed to a common scheme in fixing prices to be charged or quoted a customer. On the contrary, it is conceded that the

corrugated container business was highly competitive, and that each defendant, in deciding whether to seek a particular order from a particular customer, and in determining the price to be charged or quoted, exercised its own business judgment. Purchasers frequently shifted their business from one supplier to another. Each defendant was constantly losing old accounts and acquiring new ones. Defendants' business records indicate independent and unrestricted price competition. Many factors other than the latest price quoted or charged entered into individual decisions as to whether to seek a particular order from a particular customer, and in determining the price to be quoted (Findings 22 and 23).

Plaintiff does not challenge the right of the defendants to obtain and use reliable market information for the purpose of maximizing sales and profits, but argues that cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose an undue restraint upon free competition protected by the Sherman Act. However, this argument does not take into account the fact that, while engaged in such "cooperative and reciprocal action," each defendant exercised its own business judgment with respect to the desirability of an order from a particular customer, or the fact that the price to be quoted, whether higher, lower, or the same, was the individual decision of each defendant. There is no evidence that any defendant ever discussed with any other defendant the desirability, the frequency, or the consequences of requesting or furnishing, or failing to request or furnish, price information, or the action to be taken with respect to such information. This freedom of action reserved by each defendant completely refutes the charge that it was the common purpose of the defendants, in exchange-

ing price information, to maintain prices which would be substantially identical with the prices of another, to minimize price reductions, or otherwise make concerted use of any price information after it had been obtained. The exchange of most recent price information is not illegal merely because it enables the recipient to compete on the basis of fuller market information, so long as each competitor, although taking into account the price information received from a competitor, independently established its own price.

Neither has the plaintiff proved its charge that the exchange of most recent price information had the effect of maintaining substantially identical price quotations to specific customers, or minimizing the amount of any price reductions to be offered to such customers. No evidence was adduced by the plaintiff from any corrugated container customer in the Southeastern United States showing, or in any way indicating, that prices charged by any one or more of the defendants was stabilized or harmonized by the exchange of price information, or indicated any uniformity or parallelism of prices between or among two or more of the defendants. Actually, the uncontested statistical data in the record demonstrates the absence of any uniformity, harmony, stability or parallelism in prices. Price trends varied widely among the several defendants and among the plants of the individual defendants, both as to direction and as to degree. While the price trends of some plants were moving upward, those of other plants were moving downward. It has been stipulated that during the period covered by the Complaint, the price trend of all corrugated containers was downward, and was substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices for the same period for paper and allied products

generally. Further, during the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased. Another important factor is that the price information received from other defendants was taken into account and utilized by each defendant in individually determining the price to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. Consequently, if purchasers had always given accurate and reliable information, there would have been no necessity for calling upon a competitor for verification, and the price structure in the corrugated container business would have been the same as if no price information had ever been exchanged with competitors. It is difficult to understand how the infrequent exchange of price information between competitors for verification purposes could constitute an unlawful conspiracy in restraint of trade when the identical price structure would have been maintained, free of any illegality, had customers been accurate and reliable in reporting the same information. In all instances, the price information, from whatever source, merely permitted the recipient to make its independent pricing decision based on this and numerous other factors. The gathering of price information, from whatever source, which enables "sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not act as they choose, cannot be held to be an unlawful restraint upon commerce . . ." *Cement Manufacturers Protective Ass'n. v. United States*, 268 U.S. 588, 603, 604 (1925).

In support of its claim that proof of an unlawful conspiracy has been established, plaintiff relies prin-

cipally upon *American Column and Lumber Co. v. United States*, 257 U.S. 377 (1921) and *United States v. American Linseed Oil Co.*, 262 U.S. 371 (1923). The defendants contend that the facts in this case more nearly resemble the facts in *Maple Flooring Assn. v. United States*, 268 U.S. 563 (1925) and *Cement Mfrs. Assn. v. United States*, 268 U.S. 588 (1925), and that these decisions should be controlling. We must, of course, "in considering the application of the rule of decision in these cases to the situation presented by this record," bear in mind that "each case arising under the Sherman Act must be determined by the particular facts disclosed by the record," and that prior opinions in such cases "must be read in light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied." *Maple Flooring Assn. v. United States*, *Supra*, at 579.

In *American Column*, the defendant Association adopted a plan which required each member to make the following six reports to the Secretary:

1. A *daily* report of all sales actually made, with the name and address of the purchaser, the kind, grade and quality of lumber sold and all special agreements of every kind, verbal or written with respect thereto. "These reports are to be exact copies of orders taken."

2. A *daily* shipping report, with exact copies of the invoices, all special agreements as to terms, grades, etc. The classification shall be the same as with sales.

3. A *monthly* production report, showing the production of the member reporting during the previous month, with the grades and thickness classified as prescribed in the 'Plan.'

4. A *monthly* stock report by each member, showing the stock on hand on the first day of

the month, sold and unsold, green and dry, with the total of each kind, grade and thickness.

5. Price-lists. Members must file at the beginning of each month price-lists showing prices f.o.b. shipping point, which shall be stated. New prices must be filed with the association as soon as made.

6. Inspection reports. These reports are to be made to the association by a service of its own, established for the purpose of checking up grades of the various members and the "Plan" provides for a chief inspector and sufficient assistants to inspect the stocks of all members from to time. (257 U.S. at 394, 395).

All the reports by members were "subject to complete audit by representatives of the association," and any member who failed to report was not to "receive the report of the secretary," and "failure to report for twelve days in six months" caused the member "to be dropped from membership." The Secretary was required to send to each member a "monthly summary showing the production of each member for the previous month," a "weekly report . . . on all sales . . . giving each sale and the price, and the name of the purchaser," and "a monthly report, showing the individual stock on hand of each member and a summary of all stocks, . . . sold and unsold." Additionally, not later than the 10th of each month the Secretary was required to "send a summary of the price-lists furnished by members, showing the prices asked by each. . . ." Membership meetings were held once a month for the purpose of affording "opportunity for the discussion of all subjects of interest to the members." (257 U.S. at 395, 396, 397).

The record disclosed a concerted, systematic effort, directed by the Secretary and participated in by members of the Association, to cut down production and increase prices. While the plan was in effect,

"the prices of the grades of hardwood in most general use were increased to an unprecedented extent. . . ." For example, in one year, "the increases in prices of varieties of oak [ranged] from 33.3% to 296%"; gum increases ranged from "60% to 343%," and ash increases ranged from "55% to 181%." (257 U.S. at 409). The court is holding this concerted effort was unlawful, said:

Genuine competitors do not make daily, weekly and monthly reports of the minutest details of their business to their rivals, as the defendants did; they do not contract, as was done here, to submit their books to the discretionary audit and their stocks to the discretionary inspection of their rivals for the purpose of successfully competing with them; and they do not submit the details of their business to the analysis of an expert, jointly employed, and obtain from him a "harmonized" estimate of the market as it is and as, in his specially and confidentially informed judgment, it promises to be. This is not the conduct of competitors but is so clearly that of men united in an agreement, express or implied, to act together and pursue a common purpose under a common guide that, if it did not stand confessed a combination to restrict production and increase prices in interstate commerce and as, therefore, a direct restraint upon that commerce, as we have seen that it is, that conclusion must inevitably have been inferred from the facts which were proved. (257 U.S. at 410).

The opinion of the court in *American Column* rests squarely on the proposition that the purpose and effect of the activities of the members "were to restrict competition and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber by concerted action in curtailing production and in increasing prices. . . ." (257 U.S. at 412).

Obviously, the facts present in this case do not remotely resemble the facts in *American Column*. The defendants here were under no compulsion to give or receive price information, since each defendant was free at all times to do as he pleased in this regard. No defendant was privileged to audit the books of another defendant, nor to be furnished with other business details of their rivals. No fines or penalties were assessed for a failure or refusal to furnish price information, and there was no compulsion to *adhere* to the price requested or received. Price information was given and received on infrequent occasions, and related to only a small percentage of sales, as contrasted to disclosure of price information on all sales.

In *American Linseed Oil*, the other case relied upon by the plaintiff, twelve corporate defendants entered into an agreement, with provisions for financial forfeitures in the event of its violation, for the maintenance of a bureau to gather and distribute information among the members, including price list covering the production of members. Members agreed to furnish to the bureau a schedule of all prices and terms, and were required to report by telegraph all variations of prices, the names of prospective buyers, the point of shipment, the exact prices, terms and discounts, and other pertinent information relating to sales and prices. All such information was to be treated as confidential and concealed from buyers. The information thus gathered was made available to members through the statistical surveys by the bureau. It was provided that any subscriber who had offered his product to a prospective buyer who did not purchase should have the right to advise the bureau of the "unsuccessful offering or quotation," and to request the bureau "to bulletin all of its subscribers asking specific information regarding any quotation

or sale to such prospective buyer by any other subscribers. . . ." (262 U.S. at 385). Members were required to give the desired information. In holding that the plan, as operated by the defendants, constituted a violation of the Sherman Act, the court said:

The record discloses that defendants, large manufacturers and distributors—powerful factors in the trade—of commodities restricted by limited supplies of raw material (linseed), located at widely separated points and theretofore conducting independent enterprises along customary lines, suddenly became parties to an agreement which *took away their freedom of action* by requiring each to reveal to all the intimate details of its affairs. All subjected themselves to an autocratic Bureau, which became organizer and general manager, paid it large fees and deposited funds to insure their obedience. Each subscriber *agreed to furnish a schedule of prices and terms and adhere thereto*—unless more onerous ones were obtained—until prepared to give immediate notice of departure therefrom for relay by the Bureau. Each also agreed, under penalty of fine, to attend a monthly meeting and report upon matters of interest to be there discussed; to comply with all reasonable requirements of the Bureau; and to divulge no secrets.

With intimate knowledge of the affairs of other producers and obligated as stated, but proclaiming themselves competitors, the subscribers went forth to deal with widely separated and unorganized customers necessarily ignorant of the true conditions. Obviously they were not *bona fide* competitors; their claim in that regard is at war with common experience and hardly compatible with fair dealing. (262 U.S. at 389, 390). (Emphasis supplied).

Here again, the facts in *American Linseed Oil* are materially dissimilar to the facts in the case under

consideration. We have no agreement that took away "any freedom of action" of the defendants by requiring the furnishing of price schedules and terms, and adherence thereto; no agreement, under penalty of fine, to attend meetings and report upon matters of interest; and no agreement to comply with the requirements of any organization, or not to divulge any trade secrets. The opposite is true. As we have seen, each defendant was at all times free to exchange, or not to exchange, price information, and each price charged or quoted was the individual decision of each defendant.

Subsequent to the decision in *American Column and American Linseed Oil*, the Supreme Court, in *Maple Flooring Association v. United States*, 268 U.S. 563 (1925), and *Cement Mfrs. Ass'n. v. United States*, 268 U.S. 588 (1925), had occasions to again consider the legality of the dissemination of price information among competitors. In each of these cases, it was found that the conduct of the defendants did not have the purpose or effect of restraining trade.

In *Maple Flooring*, the corporate defendants organized a trade association for the purpose of (1) computing and distributing among the members "the average cost to association members of all dimensions and grades of flooring," (2) compiling and distributing among members "a booklet showing freight rates on flooring from Cadillac, Michigan, to and between five and six thousand points of shipment in the United States," (3) gathering statistics which were supplied, at frequent intervals, "by each member of the Association to the Secretary of the Association giving complete information as to the quantity and kind of flooring sold and prices received by the reporting members, and the amount of stock on hand, which

information [was] summarized by the Secretary and transmitted to the members without, however, revealing the identity of the members in connection with any specific information thus transmitted," and (4) "conducting meetings "at which the representatives of members congregate and discuss the industry and exchange views as to its problems." There was no "agreement agreeing among the members of the Association either affecting production, fixing prices or for price maintenance." Members were "left free to sell their products at any price they [chose] and to conduct their business as they [pleased]." Although the Government claimed that the activities of the defendants "resulted in the maintenance of practical uniformity of net delivered prices as between the several corporate defendants," there was no evidence "to establish such uniformity," or "that any substantial uniformity in price had in fact resulted from the activities of the Association. . . ." Neither was there any "direct proof that the activities of the Association had affected prices adversely to consumers." Further, the undisputed evidence disclosed "that the prices of members were fair and reasonable, and that they were usually lower than the prices of non-members. . . ." (268 U.S. at 566, 567, 568).

In rejecting the Government's argument that the necessary effect of the activities of the defendants was to "bring about a concerted effort on the part of members of the Association to maintain prices at levels having a close relation to the average cost of flooring reported to members," and such activities "should be enjoined regardless of [their] actual operation and effect so far as price maintenance [was] concerned," the court stated:

We do not conceive that the members of trade associations become such conspirators merely

because they gather and disseminate information, such as is here complained of, bearing on the business in which they are engaged and make use of it in the management and control of their individual businesses; nor do we think that the proper application of the principles of decision of *Eastern States Retail Lumber Association v. United States* or *American Column & Lumber Co. v. United States* or *United States v. American Linseed Oil Company* leads to any such result. The court held that the defendants in those cases were engaged in conspiracies against interstate trade and commerce because it was found that the character of the information which had been gathered and the use which was made of it led irresistibly to the conclusion that they had resulted, or would necessarily result, in a concerted effort of the defendants to curtail production or raise prices of commodities shipped in interstate commerce. The unlawfulness of the combination arose not from the fact that the defendants had effected a combination to gather and disseminate information, but from the fact that the court inferred from the peculiar circumstances of each case that concerted action had resulted, or would necessarily result, in tending arbitrarily to lessen production or increase prices.

Viewed in this light, can it be said in the present case, that the character of the information gathered by the defendants, or the use which is being made of it, leads to any necessary inference that the defendants either have made or will make any different or other use of it than would normally be made if like statistics were published in a trade journal or were published by the Department of Commerce, to which all the gathered statistics are made available? The cost of production, prompt information as to the cost of transportation, are legitimate subjects of enquiry and knowledge in any industry. So likewise is the production of

the commodity in that industry, the aggregate surplus stock, and the prices at which the commodity has actually been sold in the usual course of business. (268 U.S. at 584, 585).

Clearly, the information given and received by the defendants in this case was far more limited in scope, and with less frequency, than in *Maple Flooring*. Under such circumstances, together with the failure of the plaintiff to offer any proof that the communications actually restricted price competition, or that the exchanged price information was used differently from like information gathered from other sources, plaintiff's challenge to defendants' conduct must fail.

In *Cement Manufacturers*, decided the same day as *Maple Flooring*, the court held an Association of Cement Manufacturers, organized for the purpose of exchanging trade statistics, to be legal, since the evidence did not show that the arrangement had the purpose or effect of restricting trade. The avowed purpose for organizing the Association was to collect and disseminate *accurate* information "to protect each manufacturer against misrepresentation, deception, and imposition. . . ." The members were required to report to the Secretary of the Association "all specific job contracts," including "name and address of the purchaser," the "amount of cement required," and the "price and delivery point," which was in turn communicated to the other members. (268 U.S. at 591, 596).

In reversing the trial court, which held that the activities of the defendants tended to limit the amount of cement produced and distributed, and to produce uniformity in price, thus imposing a restraint of commerce, the court stated:

"From these various activities of the defendants, the Government deduces a purpose to control the price of cement, which it is charged was

to be accomplished by the control of the supply of cement on the market and by intimate association of the defendants in the exchange of information and a ready means of quoting a delivered price at any point. Cement was to be kept from the market by the use of the specific job contract accompanied by the systematic gathering and reporting of information with reference to the specific jobs and the amount of cement required for their completion. The two essential elements in the conspiracy to restrain commerce charged therefore are (a) the gathering and reporting of information which would enable individual members of the Association to avoid making deliveries of cement on specific job contracts which by the terms of the contracts they are not bound to deliver, and (b) *the gathering of information as to production, price of cement sold on specific job contracts and transportation costs, not differing essentially from similar information disseminated by the Maple Flooring Association which is the subject of the opinion in Maple Flooring Association v. United States, decided today, ante p. 563.*

That a combination existed for the purpose of gathering and distributing these two classes of information is not denied. That a consequence of the gathering and dissemination of information with respect to the specific job contracts was to afford to manufacturers of cement, opportunity and grounds for refusing deliveries of cement which the contractors were not entitled to call for,—and opportunity of which manufacturers were prompt to avail themselves—is also not open to dispute. We do not see, however, in the activity of the defendants with respect to specific job contracts any basis for the contention that they constitute an unlawful restraint of commerce. The Government does not rely on any agreement or understanding among members of the Association that members would either make use of the specific job contract, or that they

would refuse to deliver 'excess' cement under specific job contracts. *Members were left free to use this type of contract and to make such deliveries or not as they chose*, and the evidence already referred to shows that in 1920 padded specific job contracts were cut down something less than two-thirds of the total amount of the padding, as a result of the system of gathering and reporting this information. It may be assumed, however, if manufacturers take the precaution to draw their sales contracts in such form that they are not to be required to deliver cement not needed for the specific jobs described in these contracts, that they would, to a considerable extent, decline to make deliveries, upon receiving information showing that the deliveries claimed were not called for by the contracts. Unless the provisions in the contract are waived by the manufacturer, demand for and receipt of such deliveries by the contractor would be a fraud on the manufacturer; and, in our view, *the gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not as they choose, cannot be held to be an unlawful restraint upon commerce*, even though in the ordinary course of business most sellers would act on the information and refuse to make deliveries for which they were not legally bound. (268 U.S. at 602, 603, 604). (Emphasis supplied).

Similarly in this case, the evidence establishes that the communication of price information was often, if not exclusively, for the purpose of verifying information obtained from buyers, and that defendants were at all times free to use the information as they chose. Equally important, the rationale of *Cement Manufacturers* is inapplicable here as the evidence fails to show that price information obtained by any

defendant from a competitor had any effect on prices, except for its natural influence on individual action.

After a reading of all the cases, those cited by the plaintiff as well as those cited by the defendants, and comparing the facts in each case with the record in this case, the Court is led to the inescapable conclusion that no court has yet held communications of price information similar to those here at issue to be a violation of the Sherman Act. No express agreement to restrict price competition can be found in the record, and none can be inferred when every price decision by every defendant was its own individual decision, unrestricted by agreement. This is particularly true in view of the vigorous and continuous price competition of the defendants, and the admitted price structure in the corrugated container industry.

Little need be said about the other issues. The Government concedes that the activity of the Fibre Box Association is protected by *Maple Flooring*. The 1940 consent decree, even if relied upon by some or all of the defendants, is of little consequence. It does not legalize unlawful conduct. It simply permits the gathering and dissemination of information as to the cost of manufacture of corrugated containers, the actual price which the product has brought in past transactions, etc., so long as such activities are carried on without "reaching or attempting to reach any agreement or any concerted action with respect to price or production of such containers." The plaintiff concedes that an exchange of price information without an agreement to restrict price competition would be lawful, and the defendants admit that an exchange of such information, coupled with an agreement to restrict price competition, would be unlawful. In any event, since no agreement has been found to either exchange price information, maintain substantially

identical price quotations to specific customers, or to minimize the amount of any price reductions to be offered to such customers, the consent decree has no relevancy.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.

2. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers.

3. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or to furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers, for the purpose of maintaining substantially identical price quotations to specific customers or minimizing the amount of any price reductions to be offered to such customers.

4. The requesting and furnishing of price information by the defendants did not have the effect of eliminating, reducing, minimizing or restricting price competition.

5. The plaintiff is not entitled to the injunctive relief sought in the Complaint.

6. The defendants are entitled to a judgment dismissing the Complaint with prejudice.

A judgment will be entered accordingly.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

JUDGMENT

This cause came regularly on for trial before the Court without a jury, and was duly submitted for consideration and decision, and the Court, after due deliberation, having on the 31st day of August, 1967, filed herein its Findings of Fact and Conclusions of Law;

Now, therefore, pursuant to said Findings of Fact and Conclusions of Law filed herein, it is

Ordered, adjudged and decreed that the injunctive relief sought by the plaintiff be, and same hereby is, denied, and that the Complaint be, and same hereby is, dismissed with prejudice.

It is further ordered that each party bear its own costs.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

POST-TRIAL BRIEF FOR THE UNITED STATES

As used in this brief, "exchange of most recent prices" refers to the practice of defendants, of furnishing to a competitor, upon request, most recent prices to a specific customer, with the understanding that by furnishing such information each defendant would receive similar information at any time upon request. Use of the word "exchange" is not intended to convey the impression that there was a mutual interchange between the competitors as to each one's price to a competitor on the same order. Rather, the point being made is that each defendant's right to receive such information whenever it might want it depended upon the willingness to furnish it upon request. In this sense the practice was reciprocal, and during the time covered by the complaint each defendant participated in the communication of price information both as informant and recipient.

While plaintiff does not challenge the right of any defendant to obtain reliable market information for the purpose of maximizing sales and profits, we do insist that in the context of the practices of this industry, cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose an undue restraint upon the free competition protected by the Sherman Act. While defendants surely have a right to seek market information unilaterally, as from their own records or from customers, when for the purpose of maintaining stable prices to specific customers they obtain information through the cooperation of a competitor or confirm a customer's information by conferring with a competitor, such concerted activity is a combination and conspiracy among competing defendants. The necessary tendency toward price uniformity dictated by economic self-interest is reinforced in the case of direct communication between competitors for a specific order by the pressures of business ethics and honor. The inference is irresistible that when competitors confer on a specific price both implicitly

understand that the recipient of the information will set his own price at the same level or minimize any necessary reduction.

Finally, Plaintiff contends that defendants' "economic" evidence, intended to show that competition and price instability have existed in the industry during the period at issue, cannot serve to rebut Plaintiff's case. The law is well settled that the Government, having shown a conspiracy to restrain price competition, is not bound to prove the success of that conspiracy by proving what prices would have been without said conspiracy. Rather defendants have the burden of demonstrating that the agreement to exchange price information had no effect on competitive price levels, and this they have utterly failed to do. Plaintiff has never contended that defendants exchanged prices as to all transactions with all customers, nor that each exchange resulted in an identical price to that customer. The most that defendants can prove with their documents, charts and graphs is that some price competition did exist in the sale of corrugated containers. They cannot disprove Plaintiff's critical contentions that competition was inhibited, and that what competition did exist was not the free and open competition that would have existed in the absence of the conspiracy.

II. (c) ~~The combination and conspiracy of defendants to~~ exchange most recent prices charged or quoted to specific customers had the purpose and effect of maintaining identical price quotations to the specific customers with respect to whom the information was exchanged or to minimize the amount of any reduction in price to be offered to those customers.

The testimony of the officers and managers of the defendant corporations demonstrates by a preponderance of the evidence that these eighteen defendants combined and conspired to exchange most recent prices charged or quoted to specific customers for corrugated containers for the pur-

pose and with the effect of maintaining identical price quotations to those customers or to minimize the amount of any reduction in price to be offered. Although the witnesses may state it in different ways, the conclusion as to their purpose is clear and it is also clear from their testimony and from other evidence that they achieved their purpose. This direct testimony from the individuals who actually participated in the exchange should be accorded the highest probative value since the defendants' employees have offered no other explanation for their conduct.

The conclusion is inescapable that, when a few competitors who know that they will have an opportunity to share the order at the lowest price quoted, are permitted to directly exchange most recent prices charged or quoted a specific customer, the necessary result will be elimination and minimization of price competition between them as to that particular customer. But defendants seek to escape the force of this logic by contending that exchange of most recent prices cannot affect market behavior because the same information is usually available from a defendant's own files or may be obtained from the customer. Such analysis is demonstrably false, for two reasons.

First, by stressing their interest in obtaining full market data from one another, defendants ignore their customers' conflicting but co-equal interest in maintaining that quantum of uncertainty and flexibility in the market which guarantees that prices will be set by the free operation of market forces. The purchaser's interest is in acquiring his needs at the lowest possible price. His theoretical protection against the maintenance by his suppliers of an artificially high and stable market is his right to call upon a new supplier for a competitive bid when he suspects that his regular suppliers are not giving him the advantage of free and open competition. It is at this point that information as to "past market" is not available to defendants from their files. A new bidder has not sold this market before. Nor is it likely the customer will supply the information, since his purpose in seeking a new source of supply is to obtain a fresh and independent bid. Therefore the ability to obtain

most recent prices charged or quoted from competitors is crucial to defendants. A new bidder can call a regular supplier for the information and thus avoid the danger that he may enter a bid unnecessarily below the prevailing market. A regular supplier is protected by the certainty that a competitor can obtain from him the necessary information. All are secure in the knowledge that none of them through ignorance will "demoralize" the market, to use defendants' exculpatory euphemism. If it is clear that defendants are acting intelligently in their own self-interest, it is also clear they are not acting unilaterally. The purchaser is not dealing with individual competitors, as is his right, but with a cooperative monolith which under the Sherman Act can only be labeled for what it is—a combination and conspiracy in restraint of trade.

There is another, and equally important, reason why the inherent effect of obtaining most recent prices charged or quoted to a specific customer from a competitor rather than from an independent source is more certain to be a tendency toward price uniformity and the elimination of competition between the communicators. This is the intangible but significant coercive force of what may be termed business ethics or social honor when competition consists of only a few well acquainted suppliers. When one obtains a competitor's price from an independent source he is under no implied obligation to his competitor to use that information in any predictable manner. But when such closely associated competitors communicate concerning prices to specific customers it is a reasonable inference that both will expect, by reason of the communication, that the recipient will use the information in a manner in the mutual interest of both.

Plaintiff respectfully submits that the record in this case establishes that defendants' practice of exchanging most recent prices charged or quoted to specific customers had the purpose and the necessary effect of stabilizing prices and minimizing competition among defendants. Under the law this showing, without any proof of actual anticompetitive effect, would be enough to compel a judgment for plaintiff. See *Appalachian Coals, Inc. v. United States*, 288 U.S. 344 (1933); *United States v. American Linseed Oil Co.*, 262

U.S. 371 (1923). In the latter case, the Supreme Court, examining a trade association scheme for exchanging price information, said at p. 390:

concerted action through combination . . . is forbidden when the *necessary tendency* is to destroy the kind of competition to which the public has long looked for protection. [Emphasis added.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1967

No. 1064

UNITED STATES, Appellant,

v.

CONTAINER CORPORATION OF AMERICA, et al.

Appeal from the United States District Court for the Middle District of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

April 22, 1968.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA, APPELLANT

v.

CONTAINER CORPORATION OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

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[Tr. A-160]

Monday, March 2, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendants: Each of the Defendants was represented by one or more counsel as appears of record, with the exceptions as stated by Mr. McNeill Smith.

DEPOSITION OF GEORGE WILLIAM COLVIN

(PX-10)

[Tr. A-161] Q. For the record, Mr. Colvin, would you please state your complete first name, middle name, and last name?

A. George William Colvin.

Q. And your residence, sir?

A. 350 North Stratford, Winston-Salem, North Carolina.

Q. And your business address, Mr. Colvin?

A. 25th Street, Winston-Salem, North Carolina; Container Corporation of America.

Q. What is your occupation, Mr. Colvin?

A. I am Vice President of Container Corporation of America, the Southeastern Division Manager.

Q. And would you describe your duties and responsibilities, Mr. Colvin?

A. In the Southeast Division of Container Corporation, we have five plants, and I have supervision over those five plants.

Q. And those plants make what product?

A. Corrugated boxes.

Q. And which plants are they, please?

A. We have a plant in Winston-Salem, North Carolina, Chattanooga, Tennessee; Knoxville, Tennessee; Nashville, Tennessee; and Fernandina Beach, Florida.

[Tr. A-162] Q. And how long have you been engaged in

any business connected with the manufacturing of corrugated containers?

A. I started in 1928.

Q. And has it been continuous ever since?

A. Continuous ever since, yes.

.

[Tr. A-163] Q. Now, were you in charge of the Winston-Salem plant from 1955 through 1961?

A. No, sir.

Q. What period of time were you in charge of the plant?

A. From 1955 through 1957.

.

Q. Now, how big an area did the Winston-Salem plant [Tr. A-164] service?

A. Did?

Q. Between the period from 1955 through 1957.

A. Well, they serviced all of North Carolina and a portion of South Carolina and a portion of Virginia, the very tip edge of Tennessee, I believe.

Q. Were there any factors that limited the area from a practical standpoint that that plant could service?

A. From a practical standpoint there are.

Q. From a business standpoint?

A. Yes.

Q. What were those factors?

A. Mostly freight. It gets out of the area of practicality if you pay too much freight.

Q. These corrugated shipping containers are sold on what basis, freight-wise?

A. Sold on a delivered basis.

Q. Has that been true throughout the period from 1955 to 1963 for the Southeast area?

A. I think so, yes, sir.

Q. It certainly was true insofar as your company was concerned?

A. Yes.

Q. I was inviting your attention to the sales of [Tr. A-165] corrugated containers in the Southeastern United States, and I now ask you, on those occasions when your

company received an inquiry for a corrugated shipping container from a customer that it had not recently sold anything to, how would you personally ascertain what price he was then paying for corrugated shipping containers?

.

A. We would first find out if the salesman knew what was going on. Many times he doesn't.

Q. Were there occasions when you did anything else to ascertain what that price was, you personally?

A. Yes.

Q. What did you do?

A. I have asked other suppliers, if I knew the supplier. I have asked them what they had sold them at.

.

FOR DEFENDANTS:

Q. That is what I wanted to clarify. I understood you before to say with regard to Thomasville Furniture Company that there are occasions when your salesman goes in and goes over the specifics and spends a lot of time designing a new box for a new suite, is that correct?

A. Thomasville Furniture is one where—we have been supplying them.

Q. Yes. Would Thomasville Furniture Company, the [Tr. A-166] nature of its requirement or the size of the box or the specifications of the box, vary from time to time, isn't that correct?

A. Yes, sir.

.

Q. Once the specification is set, as a general rule, does that continue for a period of time or length of time?

A. Until they change that suite.

Q. Has it been your experience that it generally continues?

A. For several months.

.

Q. What other industries do you supply within your area of jurisdiction?

A. All the industries that ship, just about everything in the area.

Q. With respect to those other industries, which is the general practice? Do they generally retain their specifications for a given period of time like the textiles, or do they change every several months like the furniture?

A. I would say it is more like the textile.

FOR PLAINTIFF:

Q. Now on those occasions when you have asked a supplier for information concerning a customer from whom you have received an inquiry, can you describe to us how that [Tr. A-167] would take place, how that would occur?

A. How what would?

Q. How you would obtain this information?

A. I would ask him verbally.

Q. In a personal visit?

A. Personally or by telephone.

Q. On the occasions when it was telephone, did this include long-distance calls?

A. Yes, sir.

• • • • •

[Tr. A-169] A. If during this period of time that we are talking about, 1955 up to date, I guess.

Q. That is correct.

A. Whether during that time there is anyone on this list I have not talked to about what they have charged to somebody?

Q. That is correct.

A. I don't believe that there is anybody on there that I have not.

• • • • •

Q. Does your company now maintain a specific policy with respect to requesting information from competitors concerning prices for corrugated shipping containers sold to specific companies?

A. Yes, sir.

Q. What is that policy?

A. No conversation.

Q. How long has this policy been in effect?

A. Since January, 1963.

Q. And prior thereto, did your company maintain a policy with regard to the same subject?

A. Yes, sir.

Q. And what was that policy?

A. Any conversations regarding what people had charged for corrugated boxes, what competitors had charged for [Tr. A-170] corrugated boxes, was limited to the division manager level.

Q. And the division manager level was the level in which you served during what period of time?

A. 1958—no, excuse me, 1961 until the present.

Q. Had there been a policy enunciated by your company earlier that permitted an exchange, a request for information at a lower level than the division manager level?

A. I don't recall that it was ever enunciated but it was practiced.

Q. What was the practice?

A. A sales manager and general manager level.

Q. Could do what?

A. Could talk to, could ask competitors what they had charged for corrugated boxes.

Q. To specific customers; is that correct, sir?

A. Yes, sir.

Q. When did that practice change? That is, when the division manager was the lowest echelon that was permitted to request information from the competitors as you have just described.

A. Sometime in 1961.

Q. Prior to 1961, from 1955 through 1961, would you please give us some idea of the frequency with which you requested, you personally, requested this information from competitors?

[Tr. A-171] Mr. Manning: Prior to 1961?

Mr. Bernstein: That is correct.

The Witness: Well, from 1955 until 1961, I did not have any activity at all. Prior to 1958, that was when I was Production and Purchasing Manager, prior to 1958 I did it occasionally.

By Mr. Bernstein:

Q. Can you give us some idea of the frequency with regard to a day or week or month?

A. That varied so much at times, it was different than others. It varied a great deal.

Q. What was the experience, the limits, sometimes several, sometimes none? Were there occasions when this would occur on consecutive days?

A. Possibly, yes, sir.

Q. Were there occasions when this would occur to more than one competitor with regard to the same customer or the same inquiry?

A. That is possible, yes, sir.

Q. During the period from 1955 to 1958, do you know, of your own knowledge, whether any of your subordinates requested this information from competitors?

A. Yes, sir.

Q. What do you know?

A. I know they did.

[Tr. A-172] Q. Do you know with what frequency it was done?

A. About the same as I described previously.

Q. Was it the general rule that this involved calls out of town that the plant was in or was this limited to the town where the plant was located?

A. It was out of town. We don't have any competitors located in towns where our plants are. Except in Chattanooga.

Q. During the period from '61 to January 1, 1963, did you engage in obtaining this information from competitors?

A. Yes, sir.

Q. And did this relate to specific customers?

A. Only to specific customers.

Q. During this period of time, from '61 to January 1, 1963, did you give to any competitor information concerning a price that your company was charging a specific customer for a corrugated shipping container?

A. Yes, sir.

Q. Did that relate to the Fernandina, Florida, plant, for example?

A. On occasion; yes, sir.

Q. How would you ascertain the information relating to the customer in the Fernandina plant?

A. I would get in touch with our Fernandina plant.

Q. Did you keep any central list of all of the [Tr. A-173] customers or was it necessary in all of your plants, at your Winston-Salem headquarters, or was it necessary to obtain the information from the plant involved?

A. I had a central list of all plants, of all customers.

Q. What information did you have concerning that central list?

A. It is one that we get regularly through our Tabulating Department. It is a list of accounts we have sold, and it includes on there what we have sold, that is, the amount we have sold; and it also has the price that it is, that it was sold at, in terms of our own pricing formula. I had, in addition to that supplied by the different plants, a level which is on other than our own formula, so-called price list.

Q. Now, I would like to clarify—strike that.

I would like to get a further explanation of your answer before, that you were obliged to call the Fernandina plant for the information concerning a specific customer.

Would you please explain why this was necessary, with that list that you had?

A. That was sort of—I just didn't remember it.

Q. Do you want to clarify your answer or change it or explain it further?

A. It wasn't necessary if I had that information on this list. It was not necessary.

Q. And is it your general practice that the information [Tr. A-174] is on the list?

A. I think that I can clarify the whole thing for you.

Q. Would you, please?

A. That for a short period of time I didn't have the central list, and I found that it was an impractical thing to have to phone the plant each time something came up. It took too much time. There were too many calls. So then I devised this central list.

That, I think, clarifies it.

Q. Now, would you please describe, if you can, how that manual differed from your own company's manual?

A. It differs radically but it is much more simplified.

Q. For example, are you able to determine the square

footage in the blank from the manual, from the Inland manual?

A. Not for manufacturing purposes, no.

Q. But for quoting purposes, are you?

A. Yes, sir.

[Tr. A-175] Q. During 1961 to 1963 can you tell us whether or not you exchanged information concerning the prices charged a specific customer with John E. Butler of Union Bag-Camp Company?

A. I am sure I must have, but I don't remember specifically.

Q. Do you remember with whom you exchanged that information in behalf of Inland Container Corporation?

Mr. Manning: By "exchange" do you mean that he either gave or was given?

By Mr. Bernstein:

Q. Gave or was given information concerning a price [Tr. A-176] charged a specific customer?

A. In the general sense of people in the Inland Container Company that I have talked to about such things?

Q. That is correct. In your capacity as Division Manager.

A. Frank Talbott, Barney Roberts, Ted Davis.

Q. Do you know him as Charles Davis?

A. I don't.

Q. You don't know Charles Davis?

A. I don't know Charles Davis. Ted Davis, I say.

Q. You have mentioned several individuals from Inland. Will you describe the different circumstances in which you talked to the different individuals?

A. I don't know the circumstances I talked to either one of them. I just said I am sure I must have talked to them. I know those guys.

Q. I am talking about the telephone calls concerning a price charged a specific customer.

A. I can identify to this extent, Ted Davis is in one plant and Talbott is in another, Roberts and Talbott, they are in different locations.

Q. Were there occasions when they would initiate the call to you?

A. I am sure they did, yes.

.

[Tr. A-177] A. Prior to 1961 I was in another capacity. That is from 1958 to 1961 I was production and purchasing.

Q. To your knowledge were any instructions given to competitors to direct requests for inquiries to the division manager rather than the lower level when the policy of your company changed?

.

Q. With respect to International Paper Company, can you identify the individuals from that company with whom you gave or received information concerning prices charged specific customers for corrugated shipping containers from 1961 to 1963?

A. Here again this is completely general, because I have no specific in mind. Hugh Reid, Spike Ennis. I don't know what Spike's name is.

Q. And the same question with regard to Owens-Illinois.

A. A man named Brittain, Rosenbaum.

Q. Is that Ken Rosenbaum?

A. Ken Rosenbaum. And Tom Cox.

Q. And the same question with respect to Crown Zellerbach.

A. Joe Tarantina and Lee Ross.

.

[Tr. A-178] Q. Is it also your testimony that during 1961 and 1963 you either gave or received information concerning a price charged a specific customer for corrugated boxes, is that correct?

A. Yes, sir.

Q. And that is true with respect to telephone conversations?

A. Yes, sir.

Q. For the record, who, with respect to Tri-State Container?

A. Alan McDonald.

Q. And with respect to Carolina Container?

A. C. T. Ingram, or Carter Holbrook.

Q. And West Virginia?

A. Allen Holt.

Q. With respect to Weyerhaeuser?

A. What dates are we on?

Q. 1961 to 1963.

A. Ivan Wood and George Elliott, I think.

Q. And with respect to Continental Can?

A. Bob Groner.

Q. And with respect to Miller?

A. Harold Kyle and a boy named Noftsinger.

Q. Albemarle?

[Tr. A-179] A. With Albemarle, Tony Bagley.

Q. And Dixie Container Corporation?

A. Herb Mitchell and Joe Schwind.

Q. And The Mead Corporation?

A. From 1961 to 1963, Bob Horner.

No, excuse me. It was Jack Burham. I expect I am getting a little tired and forgetting some of these boys now. Bob Wainscott.

Q. Owens-Illinois?

A. I thought we had already done that one.

Q. Yes, we have. St. Joe?

A. I am getting pretty tired, and I have forgotten this fellow's name.

Q. And St. Regis?

A. Bill Diggs, and there is another man, Pete Petree.

Q. Now, this information that you received from these individuals as you have described, did that information assist you in any way?

A. Yes.

Q. In what way?

A. It gave me an idea of what had been going on in these accounts that we talked about, whether there was a profitable or unprofitable account, whether it was interesting or disinteresting.

[Tr. A-180] Q. What, if anything, would you do in comparing or contrasting the information that you received

from one of these competitors with the information that you had on your list concerning your company's cost to that specific customer?

A. We would just compare it. We would run down, generally speaking, we would run down the price which they said they had charged. We would run that down on our corporate costing thing to see—that would be the way we would determine whether it was an interesting price or not.

Q. Who would make the decision?

A. That decision is generally at the plant level.

Q. Did you communicate the information you received to the Sales Manager of the specific plant?

A. Always.

Q. Did you at the same time communicate any advice or instructions to him regarding the price to be charged?

A. Not generally.

Q. Can you tell us what kinds of occasions when you would be consulted concerning the price to be charged after having transmitted this information?

A. Did I say that I had been consulted? I don't know whether I have.

Q. I asked you, were you?

A. Not necessarily.

Q. Do you recall whether there were occasions when you [Tr. A-181] were consulted?

A. I am sure there must have been.

Q. What kinds of occasions were those? What type of situations would be presented to you?

A. Well, it could be maybe our Sales Manager and our General Manager of a plant thought that maybe this was a little too low for us and they would want to talk about it, whether we would let that volume go or take it at such a low price.

Q. Do you recall whether there were any occasions when the examination would disclose that the business was very profitable, very desirable at that level?

A. Oh, sure. Well, "very" is a big word. I am sure that there have been times when we would have been happy to have business if we could get it at prices that had been charged.

Q. On some of those occasions, were there occasions

when you would have been happy to have the business at even a slightly lower level, comparing your own costs?

A. Maybe.

[Tr. A-182] Q. Now do you recall a general increase in price by your company to its customers for corrugated containers in the Southeastern area around March of 1962?

A. I remember an effort to increase price, yes, sir.

Q. Did your company adopt any policy with regard to attempting to increase price?

A. We were vigorous in our efforts to increase the prices.

Q. How did that manifest itself?

A. I don't understand—

Q. How did you attempt to do this?

A. Raised them.

Q. Did you raise them by any specific across the board amount?

A. Yes, I think at that time there was some material increase and we tried to recover the increase in materials [Tr. A-183] plus two or three percent.

Q. Was there a percentage figure that you attempted to apply to all levels of all customers to accomplish this increase?

A. No, sir.

Q. How did you attempt to do it?

A. All customers weren't on the same level to begin with and depending on where they were that would determine how much of an increase we tried to obtain.

Q. Were there any limits? Can you give us a figure that you were shooting for?

A. I said we wanted to get the board back. I think what we were shooting for was a couple percent more than the board. As I recall it the board was around three percent. I imagine around five was what we were shooting for. I think that is what it was.

Q. This would vary, depending on the level at which the customers were?

A. Very much.

Q. To what degree would it vary?

A. I don't know.

I think probably twenty percent.

Q. Some increases were as high as twenty percent?

A. I think we attempted to get some that high, I believe so. As I say, I don't recall.

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[Tr. A-184] Q. I am trying to ascertain the mechanics of how your company attempted to get all of your customers priced up to a level that would give your company a return of the board increase plus additional percentage?

A. Mr. Bernstein, I don't think there was such a thing as getting all of them to a level, not in my experience.

Q. Did you have a level you were shooting for?

A. In March of 1963 I told you we tried to get the increase in materials, our basic materials. We tried to get that. And we wanted to get about two percent more than that.

I think that that is what our program was in 1962, I think so.

Q. You said 1963 before. When you said 1963 you meant March of 1962?

A. 1962. It was surrounded by a materials increase.

Q. Is it correct then, Mr. Colvin, to say that you took the cost of the board plus the increase in the price in 1962 plus a few percentage points and you established that as the level that — desired to attain for all of these customers?

A. I say again that we don't have a level for all customers. I don't know of any.

Q. I know that.

A. You have got customers all over the lot, sir?

[Tr. A-185] Q. Right. But you take each one of your customers and you compute the average, your experience from sales you made to that customer and then you determine a level. Is that level in terms of a two hundred pound test carton or what does that level relate to?

A. I don't understand what you are driving at.

Q. All right, let me try it this way. In the exchange of information that you received from 1961 to 1963 from a competitor concerning a price that was charged to the customer, that information was given to you in terms of the Inland manual?

A. Right.

Q. Was that given to you in terms of any particular test weight, like 200 pounds, or was that related to something else?

A. It is always, I don't think I have ever had them except in terms of a 200 pound test.

Q. Would you please explain to us what the intra-company level for a specific customer related to? Did that relate to a particular test weight carton or was it all test weight cartons or how did you set it forth so that it applied to the variety of use?

A. The intra-company, referring to my own company, I can't see what you are driving at. If I did I would try [Tr. A-186] to help you but I don't know.

There are various differences in accounts. I don't know of any time in my experience that I have seen all accounts at the same level.

I just haven't seen any.

Q. No, I understand that, but let's—let us take a specific account, and that account may use a 200 test carton and it may use a carton of another test weight, isn't that correct, sir?

A. That is right, sir.

Q. Do you for your own company purposes, in determining the cost, do you set down a level for each weight or do you just use one level?

A. No, sir, it might be on each box. I think I see what you are shooting at. The reference to the Inland manual is what you are talking about, I think.

Mr. Manning: Why don't you ask another question?

Mr. Bernstein: I am not referring to the Inland manual. I am referring to the information that you have in your office in Winston-Salem that lists each customer and alongside of it the level that—the level indicated—indicating the cost to the Container Corporation of the cartons that are being sold to that individual. Now I am just referring to that.

A. All right.

[Tr. A-187] Q. Now, a specific account may use a variety of shipping containers, and may use different test weights. 200 and so on?

A. That is right.

Q. Does your information list the level for each of these weights or does it just use one?

A. Just one.

Q. Is that for the 200 test?

A. No, that is the average that we have sold that account. You wouldn't understand it if I told you, but it would be a figure which we have got our conversion costs and if it is a profit in it, it would be a percentage of those conversion costs. If I said, "Plus 100", that wouldn't mean anything to you, but it does mean something to me.

Q. Now during this same period of time, and I am talking about March, 1962, or immediately prior to the increase, when you would give information to a competitor, you would give it in terms of the Inland manual, is that correct?

A. Yes, sir.

Q. And how about immediately after March 1962, when you attempted to raise these levels? Did you give the price and the terms of the Inland Manual plus an increase?

A. No, sir.

[Tr. A-188] Q. How did you give it?

A. Just give them a board factor, or a multiplier or a level that we had sold them at.

Q. In terms of the Inland Manual?

A. That is right, sir.

Q. Now, do you recall the increase in the fall of 1961 about September of 1961? Was there an increase?

A. Yes, sir, I recall that.

[Tr. A-189] Q. Do you have personal knowledge of any occasions when information that you furnished to a competitor concerning a specific account, that competitor quoted a price lower than your company was then charging the customer?

A. I am sure it has occurred. I don't know where, but I know it has occurred.

Q. Can you recall an instance?

A. I wish I could. We have lost business during this [Tr. A-190] period where information regarding what we charged had been sought. Oh, yes, more than one, but I

don't remember them all. But I remember one was General Electric.

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Q. Do you recall or do you have personal knowledge of any occasions when your company received information from a [Tr. A-191] competitor concerning a board level charged a specific customer, and cut the price?

A. Yes, I think we did.

Q. Was this frequent?

A. No, sir.

Q. Did your company have a policy with regard to quotations made on the basis of information received from competitors concerning a quotation to a specific customer?

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The Witness: If we did, I never heard it enunciated.

By Mr. Bernstein:

Q. Did you have a policy yourself with regard to that?

A. Yes, sir.

Q. What was that policy?

A. My policy was not to generally, or not to cut a price that had been given to me.

Q. And what were the factors that you considered in reaching that policy?

A. I think that I was born that way.

Q. Were there any occasions during the period from 1955 through 1963, when you determined to obtain a specific account by quoting a lower price than a competitor?

A. Yes, sir.

Q. Were those frequent or infrequent?

A. I guess you would say they were infrequent, but we [Tr. A-192] have, it depended on what was going on.

Q. Now, can you think of one of these occasions and tell me whether or not on that occasion you sought information from a competitor before quoting your lower price?

A. I can't think of a one.

Q. You can't think of one of those instances?

A. Where I sought information on what had been done, and then quoted a lower price, I cannot.

Q. Now, can you think of an instance when you deliberately quoted a price that you thought would be lower than a competitor but did not first seek the information from the competitor?

A. Yes, but I don't know. I have done it many times, many times, yes.

Q. Can you give us an instance of that?

A. I can think of some customers that we have picked up. Well, it suffices to say we have done it. I can't remember one.

Q. Well, I am trying to establish if this be the fact, and I am only trying to establish it if it is a fact, that on the occasion you determined that you were going to be the low supplier, or low priced man for that customer, when you had reached that determination, you didn't seek the information from your competitor. Is that the fact?

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[Tr. A-193] Q. Do you recall whether or not you personally adopted that policy?

The Witness: Whether or not I personally adopted it?

By Mr. Bernstein:

Q. That is whether you maintained the policy of not seeking information from a competitor concerning a price charged if you had made your own determination that you were going to be the low priced man for that account.

A. I don't remember making such a policy, but I think that is pretty much the policy that I have followed.

Q. From you, from your company? In other words, when a competitor opened up another plant somewhere in the Southeastern region, did that have any effect or did that coincide with any increase or decrease in phone calls to you?

A. No.

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[Tr. A-129]

Monday, March 2, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendants: Each of the Defendants was represented by one or more counsel as appears of record, with the exceptions as stated by Mr. McNeill Smith.

DEPOSITION OF ADOLPHUS SIDNEY CLAY

(PX-9)

[Tr. A-130] Q. Mr. Clay, will you please state your full name, residence address and business address for the record?

A. Adolphus Sidney Clay, 715 Barnsdale Road; business address, 24th Street, Winston-Salem, North Carolina.

Q. You reside in Winston-Salem?

A. That is right.

Q. What is your position with the defendant, Container Corporation of America?

A. Sales Manager.

Q. For what area, Mr. Clay?

A. For the area served by the plant located in Winston-Salem, North Carolina.

Q. How long have you served the company in this capacity?

A. Since January 1, 1958.

Q. Would you please tell us, Mr. Clay, how long you have been in the business of manufacturing and selling corrugated containers?

A. Since November 1, 1949.

Q. How long have you been continuously associated with the Container Corporation of America or its predecessor, [Tr. A-131] Mengel Company?

A. Since I believe 1952.

Q. Prior to 1958 in what capacities did you serve the Container Corporation or its predecessor?

A. As salesman.

Q. And in connection with what plant?

A. The Winston-Salem plant.

Q. Was there a period of time when you either gave or received from a competitor information concerning prices charged a specific customer for corrugated shipping containers?

A. Yes, sir.

Q. What was that period?

A. From January 1, 1958 until sometime in 1961.

Q. What, if anything, can you tell us about the frequency with which you gave or received this information during that period of time?

A. You mean the number of calls a day?

Q. That is right, sir.

A. I don't recall the maximum nor the minimum. I am certain there were some days when I received no calls or made no calls.

Q. Were there other occasions when you received or made calls almost daily during the week?

A. I imagine there were, sir. It has been several years. [Tr. A-132] I don't remember sharply.

Q. Was there a general practice or procedure that you personally employed when you received this information concerning a determination as to a price to be charged a specific customer?

A. Meaning in receiving or giving information?

Q. Let us take receiving.

A. It became one of the considerations, it became market information along with my other market information.

Q. Can you now recall a specific instance that we could use for an example of when you received information from a competitor as to a board level and what you did with it?

A. Yes, sir.

Q. Would you tell us about it, please?

A. Well, I can't recall, Mr. Bernstein, a definite conversation with a definite competitor. It has been two and a half years since I was on the telephone. I do know that there were many occasions when I sought past market information and I took that into consideration, but if you're asking me do I recall a specific conversation, no, sir.

Q. Well, I am trying to ascertain the mechanics by which this information was used by you if you can do it in general terms, I would like it and if not give it in specific instances.

[Tr. A-133] A. On receipt of such information, if this were given in level form, I would figure a price as it would apply to a specific customer's requirements, determine what that price was, and then analyze that price to see whether it would be profitable or not and how profitable it would be. That along with my other market information as received through my sales calls or my own calls, would help me determine what price I would charge that customer or quote that customer.

Q. Now in ascertaining the other market information, what if anything were you doing with respect to the information—strike that. You said other market information. Would you explain that in more detail, specifically with reference to the information you furnished—furnished you by your salesmen?

A. Well, the salesman would determine the specifications, and would determine the frequency of delivery. He would determine the servicing that the account would require. In quite a few instances he could determine the price that had been charged the customer by various competitors.

Q. How would he do that?

A. Asking the purchasing agent.

[Tr. A-134] Q. Yes.

A. He would get that to determine what printing dies had to be bought and these things all go into the make-up or have gone into the make-up of my decisions relating to pricing.

Q. And was there any other information that you needed before you would make your decision as to a price to be quoted for that specific account?

A. Any other than what, Mr. Bernstein?

Q. Other than the things you have just mentioned, that is the quantity, and the frequency.

A. Many other things.

Q. What other things?

A. Well, for instance, what times of the day could the customer take delivery, and what days of the week could he take delivery, and what type of preparation for shipment, how the shipment could be prepared for the customer's warehousing and unloading, how often the customer would require samples, and how often the salesman would have to call.

Q. And did you, or was any of that information—strike that. Was that information in addition to the information that you would receive from your intra-company manual concerning the cost of the manufacture of that box?

A. Yes, sir. The intra-company manual has allowances for most of these operations, but not all. For instance, [Tr. A-135] frequency of delivery, specific delivery dates and times are not covered in the company manual at all.

Q. Now, was there any other information that you had to obtain before you were in a position to make your decision concerning the price to be quoted?

A. Information other than what I have testified to here, you mean?

Q. Yes, sir.

A. Yes, sir, I am certain that there was other information. The very nature of the box user himself, the nature of the business that he is in is part of the determination of pricing. Some industry demands more of a corrugated manufacturer than another industry might.

Q. Now, did you seek any information concerning the price that the customer was then paying for his boxes other than from your salesman, or from your competitor?

A. Those were the two sources of market pricing information from the purchasing agent through my salesman or directly to me or from the competitor directly to me.

Q. Now, I invite your attention to the complaint filed in this action and ask you to examine the names of the defendants listed thereon and ask you to indicate whether there are any defendants listed thereon with whom you did not exchange this pricing information for specific customers of the Winston-Salem plant during the period from January 1, 1958 [Tr. A-136] to 1961.

Mr. Manning: Again by "Exchange", you mean either

gave past information or had gotten it?

Mr. Bernstein: That is correct.

The Witness: I do not recall having sought market information from St. Joe Paper Company. That is St. Joe Paper Company.

Mr. Sapp: What was the definition of exchange that you gave, Mr. Manning, the limitations upon exchange? That is the use of exchange.

Mr. Bernstein: Would you read back Mr. Manning's clarification of the question?

Mr. Manning: To save time, I think that I said by exchange, it was understood that he meant that the witness had either given past market information or received past market information from a competitor.

By Mr. Bernstein:

Q. Now, with respect to St. Joe Paper Company, do you recall ever giving St. Joe Paper Company information concerning a price charged a competitor?

A. No, sir, I do not recall.

Q. Do you recall receiving any information from the St. Joe Paper Company?

A. No, sir, I do not recall that.

[Tr. A-137] Q. Now, upon receipt of this information and considering the factors that you have testified to in this deposition, what, if anything, would you do with regard to the actual price that you made to the customer?

A. I might determine not to quote at all. I might quote the same price as had been charged by my competitor. I might quote higher than the price reported to me by the competitor, and I have quoted lower than the price given me by my competitor.

Q. Now, can you recall any specific occasions during the period from 1958 to 1961 when you quoted a price lower than the competitor after having received the market information from him?

A. Yes, sir.

Q. What was that occasion?

A. Among others, I can recall having received market

information on Futorian-Stratford Furniture, Rocky Mount, North Carolina, and then having quoted lower than those prices.

Q. Were there circumstances that led you to take that action with regard to the furniture company?

[Tr. A-138] A. It was a marketing decision by me.

Q. And what factors did you take into consideration in making that decision other than what you have mentioned before? What led you to the ultimate conclusion to quote a price lower than your competitor?

A. Having analyzed the price or prices that were given to me by relating them to our corporate cost system, I determined that we could charge less and still have a comfortable profit, and I made the decision that the prices that were given to me were unrealistic in the face of competitive realities.

Q. Who was the competitor that gave you the quotation at that time?

A. Continental Can Company.

Q. What action, if any, did you take with regard to Continental Can after you made that decision?

A. What action did I take, Mr. Bernstein? None, sir.

Q. Did you advise Continental Can of your action?

A. Subsequent to my having quoted the lower price I was asked by Continental Can what my prices were.

Q. And what did you tell them?

A. I told them what my prices were.

Q. The actual prices?

A. Yes, sir.

Q. Did you get into any discussion with them concerning [Tr. A-139] the reasons why you quoted lower?

A. Yes, sir.

Q. What was that discussion?

A. I told them that I thought the prices were not realistic in view of the nature of the competition in this area.

Q. What, if anything, did they say in response?

A. Well, one gentleman threatened to punch me in the nose. He thought it was pretty rough.

Q. Who was that gentleman?

A. I have forgotten his name. As a matter of fact, I can't recall what his name was.

Q. Did you subsequently have occasion to request information from that same individual?

A. Not from him but from others in the same company.

Q. And you got the information?

A. Yes, sir.

Q. Did that individual, the one who threatened you with an assault, did that individual ever have any occasion to ask you for information thereafter?

A. No, sir. But others in his company did.

Q. And they were given the information?

A. Yes, sir.

Q. Can you recall any other occasions when you [Tr. A-140] received a quotation from a competitor and then quoted a lower price?

A. Yes, sir.

Q. Will you tell us about that?

A. I received past market information on Carolina Mills, in Maiden, North Carolina and subsequently quoted a lower price.

Q. When was that, approximately?

A. Sometime in 1961, I believe.

Q. The Stafford Furniture incident occurred when?

A. In 1960 or 1961.

Q. And with respect to Carolina Mills, what were the circumstances there that led you to quote a lower price?

A. The business had been taken away from us on price.

Q. By whom?

A. The preceding order had gone to Carolina Container.

Q. Prior to the preceding order, had you given Carolina Container information concerning the price you were quoting that customer?

A. I do not recall whether I had or not.

Q. Did you request information from Carolina Container before submitting your quote to Carolina Mills?

A. Did I request information? I asked them for the prices that they had charged Carolina Mills.

Q. When you learned of their price you quoted lower than their price; is that correct?

[Tr. A-141] A. Yes, sir.

Q. What, if anything, resulted from that?

A. I didn't quote low enough, I didn't get the order.

Q. Would you say it was the rule or the exception to the rule that you would quote lower than the price quoted by your competitor when you received the information?

The Witness: I didn't have a rule. I made the determination, myself.

[Tr. A-142] Q. When you give consideration now to the number of occasions when you received information from a competitor, the number of occasions when you quoted a price lower than your competitor, what, if anything, can you tell us about whether it was the general practice not to quote lower or to quote lower?

The Witness: I had no general practice. If you are asking which I did more frequently, I am certain that it was more infrequent that I quoted lower.

By Mr. Bernstein:

Q. When you requested information from a competitor during the period from 1958 up to 1961 regarding a price charged a specific customer, was there a practice concerning the form in which this information was exchanged and received?

A. Most of the time it was in the form of a level.

Q. Can you describe in general terms what you would generally ask, how you would ask the question? Would you have to give them the size of the box? What information would you have to give a competitor in order to receive the information you sought?

A. You would say, "What has been your level on such and such a box with such and such an account?"

Q. And how would that be relayed to you?
[Tr. A-143] A. He would then give me the level or multiplier.

Q. He would just use a figure or would he say something that would clarify the figure? Did you need any clarification to the figure?

A. He would just give a figure, at times specific prices, but generally, a figure.

Q. Now, when he gave you a specific price what, if anything, would you have to do with it to determine the board level?

A. Well, if the price were given to us by the customer, by the purchasing account, an end price, or by a competitor, we could take that price and analyze it either on the published list or on your own corporate pricing system.

Q. Now, when you say analyze it on the published list, could you be a little bit more specific, to what do you refer?

A. The Inland Manual or list.

Q. That was from the period January 1, 1958 to January, 1961?

A. I am not quite certain when the Inland Manual came into existence.

Q. Do you recall what manual immediately preceded the Inland Manual by your company?

A. To the best of my recollection, it was the Old Dominion Manual.

[Tr. A-144] Q. To the best of your knowledge the companies from whom you received the information and to whom you gave the information related the board level price either to the Inland Manual when that was in existence or the Old Dominion Manual before that?

A. That is correct, sir.

Q. Were you able with that board level price to determine the price charged that customer for a specific shipping container regardless of the dimensions?

A. Generally speaking.

The Witness: I could not determine what our competitor had done. I determined how I would take a certain set of specifications and a certain multiplier and convert this into a price.

Q. No. I am asking whether you would be interested before making a quote as to what price your competitor was charging that customer for the box he was then using?

A. Well, the theoretical case you have put up is the [Tr. A-145] furniture industry, and their sizes vary fractionally in inches twice a year, let us say. It might go from 62 inches to 62½ or 63 inches. Minute variations, but variations nevertheless. And his past market information would be of value to me in helping to analyze the account itself.

Q. Now would you be interested in ascertaining what price the existing supplier would quote for the newly specified box? Would you be interested in that information in arriving at your decision?

Q. Were there any instances when that occurred?

A. I do not recall such instances.

[Tr. A-146] Q. Returning again to those situations between [Tr. A-147] January 1, 1958 and 1961 when you received information from a competitor concerning a price charged a specific customer, you would take that information and compare it to your cost for manufacturing that box, is that correct, sir?

A. That was part of the study I was making, that is correct, sir.

Q. Then you gave consideration to the other factors that you enumerated this morning?

A. That is right.

Q. Then you would reach a decision as to whether your company desired to submit a quotation for that business and, if so, at what price it would submit it, is that correct?

A. That is correct.

Q. Did you personally adopt any principle or policy with regard to submitting a quotation to a customer lower than that which you received from a competitor?

The Witness: No, sir, I had no such set policy. In mak-

ing prices then, as now, I attempt to get as much as I can within reason. It behooves me to make a profit. I attempt to determine my pricing with that in mind.

By Mr. Bernstein:

Q. Did you give any consideration to whether or not you had an obligation with regard to a competitor who [Tr. A-148] furnished such information to you?

The Witness: No obligation was ever told me or expressed to me in any way that I can recall.

By Mr. Bernstein:

Q. Did you expect any obligation on the part of someone to whom you furnished information concerning a price that you quoted a competitor?

The Witness: I didn't expect one way or the other. I hoped that he would quote much higher than I would. This very seldom happened.

[Tr. A-149] Q. Do you recall who was there or representatives of what companies were there?

A. I recall Mr. Alan McDonald being there, from Tri-State Container, Mr. Ken Rosenbaum from Owens-Illinois, Mr. J. D. Evans and myself from Container Corporation, and I believe Mr. Ennis from International Paper Company.

Q. Do you recall the circumstances under which you all found yourselves together in that hotel? Had this all come up spontaneously, or was it pre-arranged, pre-arrangement?

The Witness: I don't recall how we came to meet, Mr. Bernstein.

[Tr. A-151] Q. Prior to 1963, you did not rely entirely on the information furnished by the customer, is that correct?

A. That is correct, sir.

Q. Why was that?

A. Well, at times you felt that the customer may not be giving you accurate information. At times the customer would give you no information.

Q. And on those occasions, what information did you consider?

A. Information or prices or price levels that had been charged by the competition in the account involved.

Q. But you said before that it did not assist you?

A. What did not assist me?

Q. That information that you received.

A. No, sir, I said I did not get assistance in comparing my own marketing information from my customer, with that received from a competitor.

.

Q. Well, I am trying to ascertain what the facts are and so I will ask you this question: Was it of any help to you [Tr. A-152] personally in reaching a determination of quoting a price to have information from the competitor in those instances where you could not get it from the customer?

A. Yes, sir. I think that the prices that had been charged by a competitor were an estimate of what value he put on the account. In other words, if he had charged a very profitable price, it was an estimate in my mind, by that competitor, that that account or the cost of handling that account was that high. It was an estimate of the worth of the account to him.

Q. That is, if there was a little profit margin; is that correct, sir?

A. I am speaking of the cost-price ratio, Mr. Bernstein. If an account were very troublesome, the price would be likely to be much higher than if the account were not troublesome.

Q. Mr. Clay, inviting your attention to your previous testimony concerning the Stratford Furniture account, when Continental's information to you led you to conclude that the price was unrealistic and too high, what, if any,

consideration did you give to Continental's evaluation of that account?

A. I gave no consideration to what their evaluation was, as Futorian Stratford is an upholstered furniture manufacturer, and there are many in the area, and our experience with similar upholstered furniture manufacturers was what I relied on as [Tr. A-153] far as the difficulty of handling this account went.

Q. So that in addition to information concerning a competitor's evaluation of the troublesomeness of an account, what other information do you receive or what other value is the information to you when a competitor gave you the information as to what board level he was charging that customer?

A. In an attempt to sell profitably and to make my pricing determinations to arrive at a profit, I like to get as high a price as possible. We have never thought that we had to buy accounts. We are one of the older, established plants in the area and have always felt that we didn't have to quote low prices to get our accounts.

Q. Is it true, therefore, that you found some value in ascertaining what that customer was then paying to a competitor for his account?

A. Market information was of value regardless of whether it was gotten from the customer or from the competitor. It was of value.

Q. Now, do you recall, referring now to the Drexel Furniture meeting, do you recall whether you submitted a quotation to Drexel Furniture Company for a newly specified box?

A. I don't recall.

Mr. Manning: You mean before or after the meeting?

[Tr. A-154] By Mr. Bernstein:

Q. Immediately prior to the meeting.

A. I don't recall submitting an exact price on a specific specification.

Q. Well, were you concerned about the prices being charged Drexel Furniture by your competitor at or about the time of that meeting, your competitors?

A. It concerned me to the extent we were losing most of our business.

Q. Had you received information from your competitors as to what they were charging Drexel Furniture, or the board level?

A. I had sought and received such information.

Q. Had you reached any conclusions concerning the reliability of that information?

A. I had, Mr. Bernstein.

Q. What conclusions did you reach?

A. I had received information from the buyer and I chose to believe the information that the buyer gave me, which I found at variance with what the competitors had given me.

Q. At the meeting that you referred to before, at the Barringer Hotel, did you attempt to obtain any information from your competitors concerning that account?

A. I believe I asked the various competitors if they [Tr. A-155] had recently changed their pricing-levels downward in the account.

Q. What response did you get?

A. Mr. Alan McDonald of Tri-State replied that he had decreased his prices roughly three percent.

Q. What, if anything, did you do thereafter with regard to Drexel Furniture account?

A. I reduced my prices five percent.

Q. Did you advise anyone present on that occasion in the Barringer Hotel that you proposed to reduce your prices further?

A. I did not say that I was going to reduce my prices.

Q. What did you say?

A. I don't recall the specific words, Mr. Bernstein. I believe I expressed my intention to place our prices in a competitive position with the account based on information given me by the buyer.

[Tr. A-158] Mr. Manning: Again, by that you mean that he either gave it to them or received it from them?

Mr. Bernstein: That is right.

to Dixie Container Corporation of North Carolina, I will say Dixie-Morganton.

A. That will suffice.

[Tr. A-460] FOR PLAINTIFF:

Q. Now, with respect to the responsibility for determining prices to be charged specific customers for corrugated shipping containers by Dixie Richmond during the period while you were President, who had responsibility for that?

A. According to my stockholders, the responsibility rested on me.

[Tr. A-461] A. Within reason.

To digress for just a second, we are a real small company with eight or ten people in the office, whereas some of our competitors running into the same volume as we do have 60 people in the office. I don't know what in the hell they do but they have them. So, it is more or less like a family thing for us.

You can yell across and tell them to do something. You don't have to go through all these damn memorandums and committees. Because of that, all of them do about what they please. Now, we have a cost system. We know what it costs us to deliver corrugated boxes and average freight rate, an average commission. Everything based on the average. We don't have enough people to pinpoint any particular item, whether we made a profit on this item or whether we didn't make a profit. We wait until the end of the year to find that out.

We know what it cost us to do this. It is pretty close to one of these so-called manuals. If we are pricing boxes. If it is the manual price or over, I am not consulted. If it gets 25 percent off, which many of them are today, then I am consulted, are we going to do this or not? Then I make an executive decision. I have a little thing on my desk and I spin it and whatever the answer that comes off that is what we do.

[Tr. A-462] Q. Are all of these eight or ten people you refer to all-salesmen?

A. Office personnel.

Q. How many people do you have actually out soliciting business and calling on customers?

A. In Richmond?

Q. All right, let us take Richmond.

A. We have the sales manager who spends some time out.

Q. Who is that?

A. Ernie Downes. We have two city salesmen who also work out of town sometimes.

Q. That comprises the entire sales force of Dixie-Richmond?

A. No, sir. That comprises the entire sales force of the City of Richmond.

Q. How about the remainder of Dixie-Richmond's business?

A. Again, I will have to digress a moment. We are unlike many box plants. Most box plants will hire a man in training. My philosophy is that I don't give a damn what you know, all I want to know is who you know. By adopting that policy over the years, we have several part-time salesmen who have influential contacts, I don't have to worry about the price, meeting these damned prices all the time. We must have five or six of those, exclusively working for us. We [Tr. A-463] have about six more, in round numbers. I don't know, myself.

FOR PLAINTIFF:

Q. What instructions does those people, those salesmen that you just described outside of the city of Richmond, what instructions do they have regarding quotation prices?

A. I wouldn't say they have any instructions.

Q. What is the situation?

A. They are to make "X" number of calls a day and send all the inquiries they can into the home office. None of them have the privilege, none of them know how to figure box prices. We purposely do this because a salesman—I have found that every salesman is a liar. If I can digress another minute, they will come in and they will swear they saw this particular price. Now, I know you are going to get around to me and talk competition, so I will digress more.

Before the last year or two when communication was open to 99 percent of the competing plants, if a salesman came in—like our price is a dollar and he would come in and he said, "I saw a price from John Jones for 82 cents", either I had to call John Jones to see if this guy is lying or meet the 82 cents price, one or the other. And Dixie Container never thought that that procedure violated the 1940 decree. So, we never felt at all that we were in any violation. Since this started—how long has this been going on, a couple of years?

[Tr. A-464] Q. You mean the investigation that led up to the law suit?

A. Yes.

Q. A couple of years.

A. All right. For the last two years, 95 percent of my competitors are what we call off the air, that is, no communication. In that two years, the prices of corrugated boxes have deteriorated in some instances 40 percent, simply for lack of communication. I can remind you that the industry made in 1960, I think, about 3 percent after taxes on their sales. I wish you would explain to me or some of my competitors, I can cut a price 40 percent and come out. Now, we are small, we are the only independent that is on this thing. Well, Tri-State is independent but we are the smallest independent. I know we can't last much longer at this. If I have digressed enough, what was the question?

[Tr. A-465] FOR PLAINTIFF:

Q. Now, reverting again to the question concerning the salesmen, I understand the situation now, and prior to the two years ago—strike that.

Q. I take it when you say communications are off the air, since two years you have not requested any information from a competitor?

A. I would have loved to have gotten some but it was impossible for me to get it.

Q. Have you given any information?

A. Yes, sir.

Q. In response to requests?

A. Yes, sir.

Q. Now, prior to two years ago, with respect to the area outside of the city of Richmond, inquiries were directed to the home office and of the eight or ten people that you had in the office were they under the instructions that if the inquiry was at manual or above, they could submit a quotation?

A. Two people.

Q. Who were they?

A. The sales manager and our estimator.

[Tr. A-466] Q. Did those two people, I am talking about the period prior to two years ago, did they have authority to submit a quotation when the price quoted was a manual or above?

A. Mr. Bernstein, our policy, again, is just a little bit different from most people. Even when communications were on the air. I personally was reluctant to call some competitors and let them know that I had an inquiry from their particular account because I knew damn well that the minute I hung up the phone that account went down in price. There are a lot of tricks in this thing and a lot of fellows think they know better ones but they don't. So, if we didn't want to call the competitor for price guidance, and we had not gotten it anywhere else, which happens, when you can't get it from the competitor, you can't get it from the competitor, and sometimes it is not an easy thing, then we will start with the highest manual because it is a lot easier to come down than it is to go up.

We will start with the highest manual and submit those prices and then we will adjust those prices as conditions necessitate. That is our policy. That can't be a big [Tr. A-467] company's policy but it can be a little independent company's policy.

Q. Is that the policy that was in effect pretty generally from 1955 through—

A. Pretty generally. That policy has always and is today to try to get the higher and come down if you can.

Q. Now what has been your experience with Dixie Richmond as to the number of corrugated containers that were manufactured to customers' specifications?

A. All are manufactured to customers' specifications. All of Dixie's business I will say.

Q. What kind of trade does Dixie Richmond service?

A. Predominantly furniture, textile, cigarette—Plus a scattering—everybody that has a smoke stack almost can use a corrugated box. I tell the salesmen stop at every place that has a smoke stack and ask them.

Q. Has it been your experience that the specifications of different customers in the same industry vary?

A. I assume you are talking about furniture?

Q. Yes, sir.

A. Well, I would say that you go through your house and not two pieces of furniture in your house are the same size. Furniture people are like box people, they have gimmicks, too, or they change this or change that little bit. [Tr. A-468] They take last year's suite and put a new piece of molding around it and that is new stuff. When this happens some redesigning is necessary. A lot of the larger companies have people in their own organization who can measure this furniture and design the proper carton for it. When that is done then they will blanket the area with an inquiry. Some companies think some corrugated box plants are real good and they will trust them and no one else. When that happens that company usually gets the first cutting and then when he has paid his obligation to the man who did the work, he will list the size.

We have several people that we quote. We have never seen the box, we have never seen the furniture, or seen the size. That is what everybody gets, the same spec sheet, box, 41 by 19, that type. In the textile industry particularly cotton mills, they may not change a size for thirty years. It is very rare that a textile mill changes specifications insofar as size is concerned. They change specifications of a lot but a corrugated salesman going by gimmick can always reduce this in grade so that he can sell it cheaper. That is done quite frequently. What I will say is not ten percent of the box companies represented here design and measure all this damn furniture.

Q. Your company does?

A. If they want us to. I don't like it. Why in the [Tr. A-469] hell do I want to do the work for the guy?

Q. Now referring to the customers in the textile industry, a specific customer might not change his box size of his box different from some other company's specifications?

A. Next door?

Q. Yes, sir.

A. Well, a lot of the yarn mills will have a box that they call 72 cones. Maybe the level will be the same as somebody else's 72, you don't know because you don't have the hypothetical person. You can find instances where they are the same but you have to look. I don't believe we have any that are the same.

Q. There are other features to it that require it to be custom made such as printing and design?

A. Yes. They have their own printing on it, their own name and their own emblems and so forth.

Q. Does that account for the reason why the corrugated shipping container industry does not manufacture boxes?

A. For stock?

Q. For stock.

A. That has a lot to do with it. I would gamble on that, to disgress a minute more, I knew a box company in upstate New York years ago that stocked boxes for two particular customers. He had them two or three years and all the sizes were changed. If that guy had not had a fire he [Tr. A-470] would have been broke. You can't afford to stock them. They get obsolete and they get pushed around, they get beat up. They are like used merchandise when you finally get around to deliver them.

Q. They are perishable to an extent or they deteriorate?

A. I won't say that but you have Coca-Cola spilled all over them. People throw their lunch on them or run fork lifts into them. I wouldn't store mine. I don't know what in the hell other people do.

Q. What has been the experience of Dixie-Richmond with regard to the terms under which they sell f.o.b. delivered or so on?

A. All prices are quoted f.o.b. delivered. If a man wants to pick up at my plant we negotiate it. Off hand my salesmen can go up to five percent.

Q. Allowance?

A. Allowance for pick up. As I said, we have a small company, I don't have people looking up freight rates all the time. It would take three people for that. So, five percent. In the State of Virginia you get three.

Were you present this morning during the deposition of Mr. Johnson?

A. Yes, sir.

[Tr. A-471] Q. Some of the things that I am going into with you will, of necessity, be repetitious.

A. Yes, but he refreshed my memory on two or three instances, too, I will tell you that.

Q. I would like to get your present recollection of a number of things and also your experience in the industry so that if you will please excuse me for going over an area which has already been covered. You referred before to a price that was pretty close to the so-called manual?

A. Yes.

Q. Would you please explain to us this so-called manual that you referred to?

A. To my knowledge there are three manuals out. The first manual that came out as I recall was \$12.35.

Q. When are you talking about?

A. That was the level. That was the National Container manual.

Q. About what period was this?

A. I do have a hell of a bad memory. My wife says it is convenient but I give you my word it isn't.

Q. It takes a lot of mental effort.

A. I would say somewhere around '55, give or take a year or two.

Q. Did you hear Mr. Johnston talk this morning about recollecting being at a meeting hosted by Mr. Dillard of the [Tr. A-472] Old Dominion?

A. Yes, I heard him.

Q. Was that after the National Container manual?

A. Yes. What do you want me to tell you about it except that it was later, period.

Q. The National Container manual was in effect, do you recall when the Old Dominion manual was thrown in?

A. I believe it was two or three years after the National manual.

Q. Do you recall the occasion that Mr. Johnson referred to?

A. No. I tried to this morning when I heard him.

Q. But you don't remember?

A. No. As a rule we both didn't go to meetings—as a rule, because of the expense involved.

Q. And the Old Dominion manual was followed by what now?

A. I don't know in order of sequence whether it was the Gaylord or the Inland.

Q. As far as Dixie-Richmond was concerned what was its experience in regard to using the manual?

A. Again, I will have to digress a minute. Dixie was delighted with the manual. Being small we think we can sell on equal terms. But we can't sell against integrated people who don't give a damn what they sell for. Now if a manual is published and these people would sell by that, that is [Tr. A-473] going to make me rich in volume. It is not going to make me rich in money but I am going to have more volume than I ever had before because I can outsell 95 percent of them tit for toe unless they have some more inducements to offer, tit for toe.

Q. Was there any manual prior to that container manual?

A. Not to my knowledge.

[Tr. A-474] Q. Did you then find that some companies were not following the manual?

A. Yes, sir.

Q. How did you find that out?

A. We would quote the manual and they would tell us, you must be nuts, or you are nowhere near the price.

Q. Then what did you do?

A. If we had an opportunity we would revise.

Q. Did you make any effort when they were so called "on the air" to ascertain what the price was being charged or quoted by a competitor?

A. During the years we have been off the air with certain competitors for various reasons. If this would be [Tr. A-475] one of the competitors at that time we didn't trust, we would not say a word to him. We would determine it ourselves.

Q. If it was a competitor you trusted?

A. Call him.

Q. What information would he then give to you?

A. Well, the usual alibi in a condition of this sort was for the fellow to tell you that John Jones brought that price down.

Q. When you got that information in that form you understood that the customer was then paying the price that John Jones had brought it down to?

A. Yes, sir.

Q. Were you ever requested for information by these same competitors?

A. Yes, sir.

Q. What would you do on those occasions?

A. We would give them the information, Mr. Bernstein. If I am selling a box for a dollar and I don't give you the information, you got to guess at my price, and I don't want you guessing 68 cents of my dollar price. If you are going to cut it I would rather you cut it a penny, to 99. Don't make me look like an idiot. That is why Dixie Container gives prices.

Q. Did Dixie Container give the prices that it was then charging?

[Tr. A-476] A. We have always given, so far as I know—I seldom talk on the phone to competitors but my people have orders not to lie to the competition. Whether they are wrong, bad, good, indifferent. When they give them any answer they have to give them the truth. They don't always have to give them an answer every time somebody asks them something.

Q. You said before that the only thing that was important so far as you were concerned in connection with the information that the manuals had was the multiplier.

A. Yes.

Q. How about the set-up charge? Was it important to know that?

A. Yes, but you know the manual listed the set-up charge, as I recall. So, if you tell me your level, I am assuming you are following the manual complete in other regards.

Q. Were there occasions when somebody would give you a level and a set-up charge?

A. Yes, particularly when you didn't trust them. If I thought that they were giving a set-up charge cheaper than published in the manual, if I had any reason to believe that, we would ask them what is your set-up charge.

Q. Were there occasions when you found that the information received in response to one of your requests from [Tr. A-477] one of your competitors was not accurate?

A. Yes, sir.

Q. What would you do on those occasions?

A. That, again, is a bit of involvement. A big percentage of the time you wouldn't know this for some extended time. If a man is going to place an order tomorrow and asks your past market and I go in and don't get the orders, and of necessity you cut it, you might not have told me, sometimes it is months later and by that time you forget it. If it is a big deal, you retaliate.

Q. What effect, if any, does it have on the nature of the information you would give him?

A. Not a bit.

Q. You would still give him full information?

A. Yes, sir, if we gave him any, we would give him the truth.

Q. Did you have a policy that if you sought to cut a price below a supplier's current price that you would not then ask the supplier for his market information?

A. No, sir.

Q. What policy did you have with regard to that?

A. That is our policy. If we are going to cut it, forget calling the competition.

Q. So, it was your policy, you would not call them?

A. I thought I stated it, it was our policy.

[Tr. A-478] Q. You would not call them.

A. No, sir.

Q. So that the record is clear, when you say no, sir, you mean yes, you would not call a competitor; is that correct, for information as to the price he was then charging your customer if you intended to cut the price; is that correct?

A. That is correct.

Q. During this period of time that you described as being, "on the air", can you give us some idea with what fre-

quency you gave or your company, Dixie-Richmond, gave and received this information?

A. Again, being small, not many people were interested in us and we didn't have many calls. Again, because of our sales situation which I described earlier, some of our people can get information better than the average box salesman because of their relationship with a particular buyer.

Many times, the buyer has turned over to our people the quotes and they have brought the quotes back with them. We would meet these quotes and forget about them provided we would break even on it.

[Tr. A-480] Q. Mr. Mitchell, I would appreciate it, sir, if you would examine the complaint that you have before you and identify by Defendants listed there the names of the persons representing the specific Defendants with whom you have given or received information concerning the prices charged a specific customer during the period from 1955 through 1963 [Tr. A-481] relating to Dixie-Richmond.

A. May I look at the schedule which you gave because that will refresh my memory.

Q. Yes, sir, you may refer to anything you wish.

A. During what period?

Q. 1955 through 1963. Albemarle Paper—well, you take it in any order you wish.

A. Container Corporation, Mr. Colvin and Mr. Clay. Albemarle Paper, Mr. Bagley and Mr. Dozier. Carolina Container, Mr. Ingram, Mr. Holbrook. Continental Can, Mr. Groher and Mr. Johnson and Mr. Beams, who is presently with Southeastern Container.

Crown Zellerbach, Gordon Clark. Inland Container, Barney Roberts. International Paper Company, Hugh Reid. The Mead Corporation—now, I have to think of the boys' names in Durham. Wainwright and these two people you have listed, that in the Atlanta or Miami offices, I would have no occasion to talk to them. I forget that other boy's name, Mead in Durham. The sales manager, that is his title.

Miller Container, Mr. Kyle, Mr. Noftsinger. Owens-Illinois Glass, Rosenbaum and there is another new one

there now, he has been there quite awhile though, D. Brittain. I have never talked to anyone from St. Joe Paper Company regarding corrugated boxes. I have never talked to anyone from St. Regis Paper Company involving corrugated boxes. [Tr. A-482] Tri-State Container Corporation, Alan C. McDonold.

Union Bag-Camp, John Pritchett and Ed Faulkner. West Virginia Pulp and Paper Company, Joseph T. Piemonte and David Orcutt. Weyerhaeuser Company, which at that time, 1955, was Old Dominion Paper Company, Ivan Wood, George Elliott and one of the more recent ones, I think his name was Grain or Grange. I only met him once. I don't think I have ever discussed corrugated boxes with Waterbury Corrugated Container.

[Tr. A-483] Q. Do you recall the occasion of the meeting in your office in or about February 1962?

A. If you were to ask me that yesterday afternoon, I would have told you no. That is what I get for attending.

Q. What if you were asked this afternoon?

A. What is your question?

Q. My question is: Do you recall that meeting?

A. Yes, I seem to recall the meeting.

Q. Would you please tell us what you presently recall about it?

A. Not much. I have a little bar in my office. One of the gentlemen got upset because I didn't have any beer in it. I recall that very fluently. I don't recall much about it.

[Tr. A-484] Q. Do you recall what occasioned it?

A. It was in my office. I have the largest office in Richmond, in the corrugated box department. So, mine was probably the only office that they could get them all in.

Q. Do you recall who suggested that they be there?

A. It was probably me.

Q. Do you recall what the purpose was?

A. Well, now that I heard some this morning, I think I have been refreshed a bit.

Q. We are trying to get your present independent recollection. Now what you heard can refresh your recollection, but your testimony now must be what you personally recollect.

A. I don't recollect the wording or the phraseology of this meeting at all. I believe from the testimony that I have heard that it was about the time——

Q. Excuse me, when you say you believe from the testimony you heard——

A. That refreshed my memory.

Q. You are talking from your own memory now?

A. Yes, sir. With this help.

Apparently the mills had just announced a price increase in liner board. We have some competitors in Richmond who are very reluctant to try to make a profit. I would think, knowing myself, that I called these people together to ask them, "Are you going to get this damn money back or not?" [Tr. A-485] Which, of course, was always one hundred per cent in accord with getting it all back plus a little extra if we could. The box people can be awfully wishy-washy when they want to be. I don't recall that I got a commitment that they would. I think they had to take it up with their people.

I could not pin it down as to when this would take place. All of them said, "Naturally, we are," but when, they don't know. Most of it was never.

Q. Most of it was what?

A. Never for that particular increase.

Q. That resulted in what, sir?

A. It resulted in, I would say, a mistrial.

Q. Is it fair to say, sir—reverting to the deposition again, Mr. Mitchell, was it your purpose to discuss this increase on the occasion of that meeting in your office in February, 1962?

A. Yes, sir.

Q. Do you recall making a telephone call to Inland Container Corporation on that occasion?

A. No, I don't recall.

Q. Do you recall whether or not the Inland Manual shortly thereafter did have an increased board level price?

A. I can't get these dates coordinated, whether it was before, after. I don't know if that manual came out at that time or not.

[Tr. A-486] Q. When you referred to the mistrial before, did you mean, sir, that the competitors, some of your competitors or all of your competitors did not raise their prices to specific customers to take care of that increase?

A. I didn't have that in mind when I said the meeting broke up in a mistrial.

Q. What did you mean?

A. The meeting broke up as if it had not started for all that it accomplished.

[Tr. A-487] Q. What about during the course of the meetings of the Fibre Box Association, zone 10, what was discussed there?

A. I think if you would poll the members of the Fibre Box Association, that they would tell you that I have told these people many, many times it is a damn waste of time coming to hear these statistics. That is all we do. It would last about an hour. Years ago they used to go around the table for general business or discussions, how is it in your area, is business lousy, and so forth. The Fibre Box Association has a lawyer in attendance at each meeting. If one word come out of any member that would put them in [Tr. A-488] violation of any of the various acts the lawyer immediately hushed that conversation, we don't have that in a Fibre Box meeting. You can't do your laundry in these meetings at all.

Q. Do you do your laundry at the rump sessions before or after?

A. These rump sessions, you have to do your laundry with the person you want it done with. If I want to fuss at you about a particular instance I don't want six or eight people around because to tell you the truth that is one of the reasons we went, to gather information. I have enough sense to know that the others are gathering information. So, if you and I are talking about a particular account, I don't want three competitors listening to our conversation,

Q. Unless—

A. Unless they are involved.

Q. And if they are involved you do want those?

A. Yes, sir, if I can get them to listen.

[Tr. A-637]

Tuesday, March 3, 1964

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendants, Dixie Container Corporation and Dixie Container Corporation of North Carolina: John W. Edmonds, III, John W. Hardy, other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF JOSEPH A. SCHWIND

(PX-31)

[Tr. A-639] Q. Mr. Schwind, I would like to ask you, what is your present employment?

A. My present employment?

Q. Yes.

A. You mean my occupation?

Q. Yes.

A. General manager of Dixie Container Corporation of North Carolina.

[Tr. A-640] Q. Now what is the business of Dixie Container Corporation of North Carolina?

A. The manufacturing and sale of corrugated containers and its component parts.

Q. Would you tell us in general the types of customers to whom you sell?

A. The furniture trade, the textile trade—by textile I include hosiery and all types of textile manufacturers—just anybody that ships within our marketing area.

Q. Now I would like you to tell us the territory in which you sell containers and I refer to Dixie of North Carolina?

[Tr. A-641] A. Dixie Container Corporation of North Carolina, now soliciting corrugated box business in the western part of North Carolina, the northwest or the southern tip of Virginia, and the eastern, far eastern side of

Tennessee. We do a very little bit of business in the uppermost portion of South Carolina. We also have an account in New Jersey and we have one account in Delaware.

Q. Unless I tell you different, if I ask you about periods I will be referring up to October 14, 1963. Now is your answer responsive, taking that into consideration?

A. Mr. Freeze, we just started soliciting business in the Virginia area, the exact date I don't recall, it has been maybe six months ago, maybe a little bit longer but not very long.

Q. Now do you know what the date was when Dixie of North Carolina started first in business?

A. March 1, 1959.

Q. Now this territory that you outlined, would that be the territory covered between the dates of March 1959 and October 1963?

A. With the exception of the Virginia area I just mentioned, yes, as I recall.

Q. Will you tell us what your responsibilities are as General Manager?

[Tr. A-642] A. That covers a lot of things.

Q. Let me withdraw that. I would like to ask you, does your work cover sales' responsibilities and operating responsibilities which would be manufacturing? Would it cover both of those or either of them?

A. It covers both of them.

Q. Now, confining ourselves for the moment to sales, are you the chief sales person for Dixie of North Carolina?

A. Yes, I am.

Q. Do you have salesmen under you?

A. Yes, sir, I do.

Q. Do you personally do any selling?

A. Yes, I do. Approximately 60 percent of the volume I personally sell.

Q. How many salesmen do you have under you?

A. I have two salesmen on the payroll as full-time salesmen. Those are other than myself. As I recall it is six part-time salesmen which we call commission salesmen.

Q. Now, in speaking of the period prior to October, 1963,

when a customer was contacted, either one of your salesmen contacted your customer or the customer contacted one of your salesmen, at what stage was price determined that you would quote to the customer?

A. Prior to quoting a customer.

Q. I presume your salesman would work out the [Tr. A-643] specifications for an order with a prospect; is that right?

A. Yes, sir.

Q. Could your salesman quote a price at that time or did it have to be computed?

A. Our salesmen cannot quote prices. They have to be computed by the office.

Q. Now, who actually computed the price for Dixie-North Carolina? Who or what person?

A. Sometimes I did and sometimes my office personnel did.

Q. What is the title of the office person other than yourself who would compute prices?

A. Well, my production man figures prices. I have an estimating man who figures prices. Just about anybody can figure a price.

Q. Suppose you get an order for a custom-made carton for a customer, would you tell us, please, how you arrive at the price you quote the customer?

A. Are we saying a new customer, Mr. Freeze?

Q. Let us take, first, a new customer.

A. A salesman, first of all, has all these specifications. Sometimes he can get the price or approximate price from the buyer. Many times, he will quote manual, on the manual, top dollar. Sometimes, if I know who the suppliers are, I will call them and ask for past market [Tr. A-644] information on this account.

Q. You mentioned a moment ago, I believe, that at times you would obtain information as to market levels from competitors, is that true?

A. That is right, sir.

Q. Now, I would like you to take the complaint, copy of the complaint which you have there, and tell me, starting with the top named defendant, with which of these com-

panies you have either given market levels or received market levels. Is that clear?

[Tr. A-645] A. Name the companies to which I spoke?

Q. Yes, indicate the companies with which you have had these exchanges. First, is it clear as to what I mean by exchanges?

A. Yes. Container Corporation of America—

Q. Let me interrupt you again. As we go down, in order to save time, will you tell me as you name the company the individuals whom you contacted during this period or had these contacts with during the period March 1959 until October 1963? In other words, after you give me the name of the company, give me the individual to the best of your recollection. Is that clear?

A. Yes, sir.

Container Corporation of America, Winston-Salem, at that time it was known as the Mengel Company, Mr. Bill Colvin, J. D. Evans, and Adolph Clay. They have one plant in Tennessee, Knoxville, I believe, Mr. McCorkle.

Albemarle Paper Manufacturing Company, I believe I may have talked to Mr. Dozier. As I recall, it was only one time.

Carolina Container Company—I can't recall ever discussing any market information with C. T. Ingram. I have with Mr. Holbrook and with Mr. Webster.

[Tr. A-646] Continental Can—this is in the period from 59 through 63?

Q. Well, your Dixie-North Carolina went in business in 1959. From that date until October 1963.

A. I forget the sales manager's name—Mr. Beams.

Mr. Johnson: That is Continental Can Company, is that right?

The Witness: Yes. Also there is one other gentleman, I think, I recall talking to in the Martinsville plant. I don't recall his name.

Crown Zellerbach would be Gordon Clark. Inland Container Corporation, I believe I spoke to Mr. Roberts one time.

International Paper Company, Mr. Hugh Reid and Spike Ennis.

The Mead Corporation, Mr. Bob Wainscott and Mr. Bert Pritchett.

Miller Container Corporation, Mr. Bill Noftsinger. I don't recall ever speaking to Mr. Kyle on past market information.

Owens-Illinois Glass Company, Mr. Rosenbaum and Mr. Brittain. St. Joe Paper Company, I never had occasion to call, nor St. Regis Paper Company. Tri-State Container [Tr. A-647] Corporation, Mr. Alan McDonald.

Union Bag-Camp Paper Corporation, in the Jamestown North Carolina, plant, Mr. Ed Faulkner, Mr. Ken Payne, Mr. Tom Fahy.

In the Spartanburg, South Carolina, plant, Mr. Frank Grimes and Mr. Jim Goodman.

West Virginia Pulp and Paper Company, Alan Holt. Weyerhaeuser, Mr. George Elliott, Mr. Ed Graine.

The Waterbury Container Company, which I know as Blue Ridge Container Company, Mr. Joe Reynolds and Jack Walker.

Q. Now, Mr. Schwind, is it your testimony that in connection with these individuals that you have just named, you both received information as to prices charged specific customers and also gave that information?

A. In most cases I am sure I did, I received and I gave.

[Tr. A-648] In connection with these exchanges of information which you have spoken of, were they made by telephone or in personal encounter or by what means normally.

A. Normally by telephone.

Q. Were they ever made other than by telephone?

A. There may have been a few occasions that I happened to be in the area and I stopped by to talk to a competitor.

Q. Now, I would like to ask you a little bit about the type of information exchanged on these occasions. Exactly what would be exchanged, what information?

A. You mean if I called a competitor and ask him?

Q. Let me ask it this way. Suppose you desired information from a competitor, what would you ask him?

A. "Can I have your past market in this account?"

Q. What is your definition of what you mean by past market?

A. What he sold his account for, the going price, what he is getting for it.

Q. You said going price. How would you define going price, the most current market?

A. The last price he got for the item or the order?

[Tr. A-649] Q. I am asking you, what is your meaning? You used the term. What is your definition of going price?

A. What he got for the last order. This is, as a rule, the market.

[Tr. A-651] Q. Have there been any occasions when you have given or received what you have defined as market information to competitors at a Fibre Box meeting?

A. I am sure there has been, I don't recall any offhand. You know, just to say, "What is your past market in this account?" He may elect to tell me, he may not. He may give me the wrong information.

[Tr. A-367]

Tuesday, March 3, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Continental Can Co., Inc.: Helmer R. Johnson, W. C. Harris, Jr., Charles E. Lewis. Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF JEHAN BOUTIN JOHNSON

(PX-21)

[Tr. A-368] Q. Will you please spell your first name, Mr. Johnson?

A. J-e-h-a-n.

Q. And your middle name?

A. B.

Q. And by whom are you employed, Mr. Johnson?

A. Continental Can Company.

Q. And in what capacity, sir?

A. District Sales Manager.

Q. How long have you held that position?

A. Since January 1, 1962.

Q. Prior thereto, had you been in the employ of the Continental Can Company?

A. No, sir.

Q. By whom were you employed prior to January 1, 1962, that is immediately prior thereto?

A. Dixie Container Corporation.

[Tr. A-370] Q. Now during the period of time that you have been with Continental Can Company, has there been a uniform policy with regard to f.o.b. sales? Have they uniformly been sold on a delivered basis?

A. Not always.

Q. What are some of the other bases upon which it has been sold?

A. Pick-up.

Q. Are those the only two?

[Tr. A-371] A. If you mean are they either delivered or picked up, the answer is yes.

Q. I am talking about the price quotation. We know that they are either delivered or they are picked up, but who bears the freight? Who pays the bill?

A. I think basically we, in effect, always pay the bill, because if the customer picks up, we allow the freight.

Q. When you make delivery to his door, you pay the amount of the freight to his plant, is that correct, regardless of location?

A. Not always, Mr. Bernstein. There are exceptions, but that is the general practice.

Q. On those occasions when the customer made the pick-up and an allowance was granted by Continental Can, was there a uniform allowance granted? How was that determined?

A. It is usually based upon the actual freight that it would cost to ship the customer. This is sometimes difficult to determine because your costs could perhaps vary. If you would be using rail carrier, that would be one thing, a common carrier another thing, a contract carrier a third thing, and your own truck a fourth thing. So, the specific answer to your question would be difficult unless I knew exactly which area we were talking about. Basically, we would allow the actual freight.

[Tr. A-374] Q. I will rephrase the question again, and take it in pieces. You stated before that you were interested in all of [Tr. A-375] the information that you could get concerning a specific account, is that correct, sir?

A. Yes, sir.

Q. And one of the items that you were interested in was the price that a specific customer was then paying for the shipping containers he was then using, is that correct?

A. Yes, sir.

Q. And you sought to obtain this information from the salesman, is that correct?

A. Yes, sir.

Q. Now, from what other sources did you attempt to obtain this information?

A. I could obtain that from possibly contacts with competitors, past experience, and general knowledge. You often are able to estimate fairly accurately the price of a given container on the basis of price information you may already have on previous containers consumed by that particular customer.

Q. Now, will you explain the last answer, how that happens, that you personally would often be able to ascertain the price that he was then paying for his present container, based on the price, that he was presently paying for a different container?

A. Exactly.

[Tr. A-376] Q. Will you explain that, please?

A. Well, if I am supplying a customer a box of a given size, and he has requested another one, I am generally going to calculate the price on the new specifications on the same basis that I had sold him the previous item.

Q. When you say on the same basis, does that have any relationship to board level or multiplier factors?

A. Well, we use a square footage as a basis.

Q. What do you multiply the square footage by?

A. Well, we multiply the square footage by a figure which will represent the cost or rather the selling price of a given grade of board which in turn is developed from the components of that given grade of corrugated board.

Q. Does that multiplier have a specific name?

A. Well, "multiplier" is one name.

Q. What is another name for it? Is there any other name?

A. "Level" is a name, "factor" is a name.

Q. Now, you have just described an instance where your company is supplying some other boxes to the customer. Are you able to ascertain the same information if a competitor was supplying a different box to that customer?

A. Yes, sir.

Q. How would you do that?

A. Well, you can determine that from the competitor [Tr. A-377] from a third competitor that may or may not supply the account but may know the price, or another salesman may know it, and so on.

Q. What has been the practice from January 1, 1962, with obtaining that information from another competitor?

A. Well, if I felt that was necessary, I would request that information.

Q. How?

A. Usually by contacting the competitor, by telephone.

Q. And was that competitor generally within the same city in which your office was located?

A. No, sir.

Q. And these then involve long distance calls?

A. Sometimes, yes.

Q. And what distance?

A. Well, they would usually be competitors within the market area that I am responsible for. Generally speaking the customers in my market area not supplied by me or my firm are usually supplied by other firms within or adjacent or nearby the same area.

We don't get involved in great distances, at least I don't in my responsibilities.

Q. Now, you also distinguished between either calling a competitor who was then supplying the boxes, is that correct?

[Tr. A-378] Let me restate it. I believe you just testified that when your company was not supplying a different box to a specific customer, but some other competitor was supplying that box, you might call not the competitor who was supplying the box, but some other competitor who was not supplying the box, who would have information about that?

A. Yes, sir.

Q. Would you explain that, please?

A. Well—

Mr. Johnson: Maybe you could be more specific about what you mean by "explaining".

The Witness: I was going to say, I would call some competitor that possibly is not supplying the box.

By Mr. Bernstein:

Q. Would you select any specific competitor?

A. Not necessarily. It would depend on the account. My selection would depend on the account.

Q. Can you give us some idea of what factors you would consider in determining which company of each of the defendants listed here you might call, or which one you would not call?

A. I think, Mr. Bernstein, the principal factor would be experience.

Q. Experience as to what, sir?

A. My own experience. In other words, certain suppliers [Tr. A-379] tend to supply certain accounts, although not necessarily a given box.

Q. Is it a fair statement to say that in many instances, you personally are familiar with which competitors are suppliers of which accounts, is that correct?

A. Basically, yes.

Q. And you are also generally familiar with in a general way, in many instances, with competitors who are not then supplying a particular account but have in the past, is that correct?

A. Can I answer that another way?

Q. Go ahead.

A. In the accounts I supplied, we certainly make it a point to keep as well informed as possible about competitive activities in those accounts. Now, naturally our plants are running and the principal business that I am concerned with is the customers that I am supplying. And I make it a point to try to keep as well informed as possible about competitive activities in the accounts that I am supplying, first of all, because an ounce of prevention is worth a pound of cure.

Q. And what people do you rely on to gather that information from?

A. Principally the salesmen.

Q. The salesmen of other competitors, is that correct?

A. No, principally my own salesmen. They keep in [Tr. A-380] constant touch with the accounts that we supply, and they are trained and encouraged to have a nose out for any competitive activity of any kind. You know, "So-and-so is sniffing around such-and-such account."

Q. I see. So that if you have information that comes to you from your own salesman that would indicate to you some other competitor might be interested in that particular account, you would call that competitor, is that correct sir,?

A. Possibly, or perhaps I might call another supplier who is in the account with me, who might have heard the same information, to try to get this, to try to determine whether this information is accurate and so on and so forth.

Q. And how do you ask that information? How do you refer to it? Could you describe a typical conversation where you are interested in finding out the price that a specific customer is then paying for a box that he is using?

A. Repeat that for me, please.

(The question referred to was read by the reporter.)

The Witness: Well, I may say, "What is the price of such-and-such a container?"

Or, "What is the price in this account?"

Or, "Has so-and-so got a lower price in this account?"

Or, "What in the world is so-and-so up to? Have you [Tr. A-381] heard anything about XYZ Company?" I am being hypothetical, of course. "Making an offer to these people?"

"Have you an order lately for this?"

Or, "What has been your experience last week?" Or, "When was your man in there last?" My activities are principally to inform me or to get more information.

By Mr. Bernstein:

Q. And on those occasions when a competitor would give you information in terms of a price, would he give it to you in terms of board level or end price or in what fashion?

A. I would say in both.

Q. When he gave it to you—

A. He may not do both at once, but one of the other.

Q. It varied depending on the conversation?

A. Yes.

Q. On those occasion when you would say \$13, if somebody gave you that answer in response to a question that you had asked as to what was the level, what would you understand him to mean when he said \$13?

A. I would assume he was getting \$13 for 200-test board.

Q. And computed with what set-up charge?

A. I wouldn't know that.

[Tr. A-382] Q. I know you didn't make specific mention of it in the conversations, but did you understand that the reference was to the \$13, for example, that it referred to the Inland Manual? Did you understand that?

A. Well, not necessarily, because ever since I have been in the box business, when you are talking shop to a box man, your own people and other people, as far as I know it has been historical practice for 40 or 50 years to refer to pricing in terms of 200 test and presumably long before I got into the industry if a man says an account was \$8 or \$9, maybe 30 years ago, he is talking approximately about the price of 200 pound test board. So that this matter of levels and so on, as far as I know, of course I wasn't in the industry, but judging from what I have heard and learned about it, it has been the common method of pricing since, in fact as far as I know when there was solid fiber, they priced it in the same fashion.

Q. Right. I am asking about your personal experience now. When you talk about a level of 200 test, is it your knowledge that there is uniform differential between the different tests in the Inland Manual?

A. Yes, sir—well, I don't quite follow you—

Q. Supposing you are interested in ascertaining the price of a box that is 175 pound test, and you received the \$13 price, and you understood that to refer to the 200 test, [Tr. A-383] was there a uniform differential that you applied to the price of the 175 pound test?

A. Yes, sir, it is a pretty standard, uniform—it is based on the raw material that is in it, the difference between 175 test and 200 test is basically the difference between the liners that go to make up the combination and therefore the difference in cost would be relatively uniform.

Q. You have used the phrase "past market". Would you please explain what you mean by those words?

A. Basically, I think it would mean what we have either sold containers for or offered to sell for in the past.

Q. I show you the complaint filed in this action and invite your attention to the specific Defendants listed thereon. I would ask you, Mr. Johnson, to please try, with respect to each one of the Defendants there named, to identify the representatives of such Defendants to whom you gave or received information concerning "past market" to specific customers during the period from January 1, 1962, and thereafter.

[Tr. A-384] A. Container Corporation—I am not sure if I have talked to their representatives during that period. If it was, I believe it might have been a very brief time. It would have been Mr. Clay or Mr. Evans. Albemarle Paper Manufacturing Company, it would have been Mr. Bagley or Mr. Dozier. Carolina Container Company, Messrs. Ingram, Holbrook or Webster. Crown Zellerbach, Mr. Clark.

Dixie Container, Mr. Downs, Mr. Mitchell. Dixie Container Corporation of North Carolina, Mr. Schwind. Inland Container Corporation, Barney Roberts. International Paper, again, Mr. Bernstein, I don't believe I have talked to their representatives during the period that you referred to.

Also, I believe that is probably true of Mead Corporation. It may be in the very beginning of the period.

Miller Container Corporation, Mr. Noftsinger, Owens-Illinois Glass Company, Mr. Rosenbaum, Mr. Brittain. St. Joe Paper Company, no one.

St. Regis, it is possible I have talked to Mr. Diggs but they are a long ways from my area and I rarely ever talked to them.

Tri-State, Mr. McDonald. Union Bag, Mr. Faulkner or Mr. Wulff.

[Tr. A-385] West Virginia, Mr. Orcutt, Mr. Barrow. Weyerhaeuser Company, Mr. Elliott, Mr. Riggs. I don't believe I have actually ever talked—maybe once to Mr. Riggs, or twice.

Waterbury Corrugated is Mr. Reynolds.

Q. During the period of time when you were with Dixie Container Company, would you identify the individuals that you spoke to?

A. Container Corporation, Mr. Evans and Mr. Clay. Albermarle Paper Manufacturing Company, Mr. Dozier, Mr. Bagley. Carolina Container Company, Mr. Holbrook and Ingram and Webster. Crown Zellerbach, Mr. Clark. Inland Container, Barney Roberts.

International Paper Company, Hugh Reid. Mead Corporation, Bob Waynescott, and Dave Bloom. Miller Container, Mr. Kyle, Mr. Noftsinger.

Owens-Illinois, Mr. Rosenbaum and Mr. Cobb, possibly Brittain. I don't know whether he was there when I was with Dixie or not.

St. Joe, I don't recall the names.

Q. Excuse me. You say you don't recall the names. But do you recall having conversations with somebody?

A. Probably had a few with somebody.

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Q. St. Joe Paper Company.

A. St. Regis, again very little contact with them. [Tr. A-386] Tri-State, Alan McDonald. Union Bag, Mr. Pritchett. Mr. Faulkner.

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The Witness: West Virginia Pulp and Paper, Mr. Orcutt and Mr. Holt. Weyerhaeuser Company—perhaps this wasn't Weyerhaeuser during that period. Again, I don't know off-hand.

By Mr. Bernstein:

Q. Who was the individual with whom you gave or received "past market information" in behalf of Old Dominion Box Company?

A. Ivan Wood. I don't believe Waterbury was in operation at that time, either. Again, I am not sure.

A. Do you recall whether or not you had conversations with any representative of Highland Container?

A. Yes, sir.

Q. Was that plant subsequently acquired by Union Bag?

A. Yes, sir.

Q. Who, in behalf of Highland Container, did you have those conversations with?

A. I thought it was Mr. Faulkner but I could be in error there.

Q. How about Mr. Pritchett?

A. Yes, sir, I believe I mentioned him.

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[Tr. A-387] By Mr. Bernstein:

Q. Now about on telephone calls to and from the office, on those occasions when you are in the office, is this a common occurrence?

A. Well, it would depend on what you mean by "common." I will put it this way: It is not an uncommon occurrence, whether there is anything or not.

Q. You did not consider it unusual within your business, is that correct?

A. Absolutely not.

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Q. Mr. Johnson, inviting your attention to the year 1959, in the period of time when you were then in the employ of the Dixie Container Company, do you recall any occasions when you were in the company of competitors at the Sir Walter Raleigh Hotel in Raleigh, North Carolina?

A. I cannot state for sure it was during 1959.

Q. Do you recall a meeting with competitors in the Sir Walter Raleigh Hotel?

A. Yes, sir.

Q. What do you recall about it?

A. Well, actually at this late date, mainly that I went to the meeting.

Q. Do you have any recollection as to what the subject matter of the meeting was?

[Tr. A-388] A. Not specifically, no, sir.

Q. If I were to suggest to you the subject of set-up charges, would that refresh your recollection in any manner?

A. Well, it is possible that along in that time was when

the set-up charge changed. Now again I am not sure of the time exactly.

Q. Now, addressing my questions—strike that. Let us approach it this way: What was the set-up charge you used in trying to ascertain what some competitor might be charging a specific customer when you received information from that competitor as to the board level during the period from 1961 and thereafter?

A. 1961?

Q. Yes.

A. Well, it would be any one of several set-up charges, I believe. The period has probably gotten me a little confused.

Q. Well, do you recall any occasions when there was a \$25 set-up charge?

A. Yes, sir.

Q. When was that, to the best of your recollection?

A. Well, the \$25 set-up is in existence now.

Q. And do you recall generally how long that has been in existence, continuously for the recent past?

A. Certainly it has been several years, and exactly [Tr. A-389] how long, I don't remember.

Q. Do you recall what the set-up charge was immediately before it was \$25?

A. \$15.

Q. And had that been in effect any length of time?

A. I think it had been in effect some length of time.

Q. And immediately prior to \$15, do you know what the set-up charge was, or had been?

A. Well, I actually think perhaps it was \$25, but also \$15 and also \$8 and \$10 and \$12, and so on.

Q. Prior thereto on successive occasions, is that correct, successively?

A. Set-up charges are not always the same in every account in any given moment.

Q. Do they vary from box to box?

A. Definitely.

Q. And is there a basic set-up charge for a regular slotted carton?

A. Well, there are several basic set-up charges.

Q. For regular slotted cartons?

A. For regular slotted cartons, yes, sir.

Q. Do you recall the occasion when the \$15 set-up

charges was changed to—strike that. Without necessarily recalling the specific date, can you recall the period, or circumstances about the time when the \$15 set-up charge was [Tr. A-390] being given consideration for a change to the \$25 set-up charge? Do you recall having any discussions with any competitors on that subject at about that time?

A. Well, I undoubtedly had discussions with them, but recalling the specific ones, it is very difficult. This process went on for several years, I believe, and there were other areas where the set-up charges were varied, and they still are, and so on.

Q. Were those discussions held on occasions when several competitors were together at a meeting?

A. Well, certainly it is possible, and I don't recall specific instances, personally, but I probably began to contact competitors during this period, personally.

Q. And can you give us some more precise explanation of what the subject matter of the conversations were when you contacted competitors concerning these set-up charges?

A. Well, I don't really recall a specific occasion where I contacted somebody specifically about the set-up charges.

Q. But do you have a general recollection now of the general nature of the subject and what the general subject matter was and what you were trying to accomplish and what—strike that—and what you were trying to convey to them and what they were trying to convey to you?

A. Would you go over that again? That "strike" got me [Tr. A-391] confused.

Q. I will re-phrase the question. Do you now have a current recollection in general terms of the subject matter of what you told the competitors and what the competitors told you in relation to change in set-up charges, from \$15 to \$25?

A. Well, I am not exactly sure. It seems to me that a manual was published by one of the competitors or maybe more than one, reflecting a higher set-up charge. The only general recollection that I might have would be that after the manual was published, "Is it sticking?" or something like that.

You are asking me to make a general recollection of a period that might have been several years long actually, and I am awfully vague about it, because it seems to me

there was a manual published with a higher set-up, and then subsequently one was published which went back to the old one and another one was published, and to give you a general recollection, it is very confused in my mind.

I didn't begin to contact competitors, or rather I probably began to contact competitors during this period as far as my experience in the box business is concerned, in 1959, for example, would go back seven years, and I have only been in the business about nine years. It was when I was pretty green, and I don't really know how I could give you a [Tr. A-392] general recollection, except a very general one that it seems to me that the set-up charges went up and down and up and down, and subsequently settled down to the present set-up charge.

Q. All right.

A. Which is not necessarily always the set up.

Q. Recognizing the burden this places on you, on taxing your memory, I would ask you please to try and recollect now during the latter period of time when you were with Dixie Container, and the set up charge was increased to \$25.00. Do you recall whether or not you contacted any competitors to find out what their experience was with regard to the reception of customers to the increased set up charge?

A. I probably did.

Q. Do you recall whether this was by individual contacts with competitors, or whether there were occasions when several representatives of several competitors would be together in one room or in one place discussing it?

A. I would say probably it happened both ways.

Q. Now, can you recall whether there were any occasions when either you or someone else specifically arranged a meeting for a discussion of a common problem relating to corrugated containers?

A. Well, I don't think that I have arranged any. But I would say, "yes".

[Tr. A-393] Q. Now, how about those, do you recall any that you attended?

A. I attended a meeting at Mr. Mitchell's office.

Q. Which Mr. Mitchell is that?

A. Dixie Container.

Q. Will you tell us about that to the best of your recollection?

A. That meeting happened when the price of liner board went up, I believe in early 1962. We just met in his office and had a bull session, mostly revolving around the fact that the liner board had been increased. Everybody was raising the devil about it.

Q. Was there any discussion concerning increasing the price of corrugated containers?

A. Yes, sir. I, for one, had been ordered to raise my price by my company.

Q. Who else was present at that meeting, to the best of your recollection?

A. Well, Mr. Groner was present. I think he left early. Mr. Kyle and Noftsinger were present. Mr. Bagley and Mr. Dozier were present. I think we were supposed to have lunch. Some of us had lunch, and others didn't.

Q. And where was Mr. Mitchell's office at that time, in what city?

A. Richmond.

[Tr. A-394] Q. Your office was in Richmond, is that correct?

A. Yes, sir.

Q. Was Mr. Dozier and Mr. Bagley's office in Richmond at that time?

A. Yes.

Q. Was Mr. Noftsinger's office in Richmond at that time?

A. I am not sure about the timing. His office is in Roanoke, but I think at that time his parent company's office was in Richmond.

Q. How about Mr. Kyle?

A. He and Mr. Noftsinger are associated with the same company.

Q. Do you know whether his office was in Richmond?

A. Their regular office was in Roanoke.

Q. Do you recall whether or not any of those other gentlemen had advised you that they had raised their prices on corrugated containers?

A. I think probably yes.

Q. What did the discussion concern itself with?

A. Well, the fact that liner board had been increased and we had to recover the increased cost. Liner board

being the principal raw material of a container.

Q. Do you recall whether you told them that your price would increase?

A. I believe I probably told them that I had been [Tr. A-395] instructed to raise my price and had already instructed my salesmen and so on to do so.

Q. Had the increase actually been communicated to your customers yet?

A. Yes, I think that it had, because I had—well, again, you advise your salesmen to advise their customers of price increases and if a guy has a hundred customers, the hundredth one will be later than the first one, but I had put in motion definitely the process of raising prices and had advised them.

As I recall, there was a fairly substantial notice given on the increase in the price of liner board.

Q. In the price of liner board?

A. Right.

Q. How about the price of corrugated shipping container?

A. In most cases we would advise our customers that our prices were going to be raised effective with shipments whenever the liner board increase was also effective, thereby passing it on to them. We may inform them this afternoon that on April first, for example, when liner board goes up, our box price will also be increased; in the meantime, between this afternoon and April first, it is not, but the customer has been advised what is obviously going to be an increase in price.

[Tr. A-396] Q. Did you give any consideration at all at that time as to whether your competitors were going to increase the prices for their shipping containers effective March 1st?

A. I think that these, plus probably other published articles, indicated that practically all the mills were going up on liner board and that would certainly lead me to assume that all of my competitors were going to go up on box prices, because their raw materials were going to increase.

This has been past practice, also, that as liner board has gone up, box prices have gone up.

Q. Were you endeavoring to ascertain from Mr. Miller and the other members there whether they planned to increase their prices effective the same time as your company?

A. Well, the way I felt about it was that I was under instructions from my company to raise my box prices, and it certainly was likely I would not be able to do that if my competitors did not increase their prices. So I was naturally interested at the time in what my competitors were doing or had been doing, as I always am.

In a highly competitive business you spend half your time wondering what your competitors are up to. That is where your business goes if you lose your account, it goes to some competitor.

[Tr. A-397] Q. Do you recall what Mr. Dozier or Mr. Bagley told you concerning Richmond's intentions?

A. Not specifically. I believe they indicated that their company was raising the price of liner board and therefore they were raising the price of boxes.

Q. How about Mr. Noftsinger and Mr. Kyle?

A. Again, I think the issue here is that the liner board had been raised. It is almost automatic that you have to raise your box prices to recover these costs.

Q. Do you recall any discussion concerning what other competitors were going to do toward increasing the price of corrugated shipping containers?

A. I think that there was certainly discussion and speculation on whether or not they would, and so on and so forth.

Q. Do you recall whether any telephone calls were made on that occasion to ascertain what other competitors were going to do about increasing their prices of corrugated shipping containers?

A. I believe that someone stated that he had heard that a change in the manual had been published. I believe that a telephone call was made to try to determine if a change in the manual had been published, and I believe that it was ascertained at the time that a change had been published in the manual.

[Tr. A-398] Q. Do you recall who made the telephone call?

A. I believe Mr. Mitchell made the telephone call.

Q. Do you recall to whom he made the telephone call?

A. I believe he made it to Inland Container.

Q. Do you recall whether the information referred to a change in the Inland Container Manual?

A. Basically I think it did.

Q. I am talking of occasions when two or three representatives of a competitor, are together discussing a common problem from 1961 on.

A. I remember a meeting attended in January 1961.

Q. Tell us what your recollection about that would be?

A. I had been working for Continental two or three days and we had obtained market information, or, rather, Continental apparently had obtained market information from a competitor and promptly quoted a more attractive price to the customer and received a contract, and I wasn't a party to this action because I wasn't employed by the company at the time but at the time of the meeting I was with the company. We then had the business.

Q. Who was present?

A. Mr. Riggs of Weyerhaeuser and some other gentlemen whose name I have forgotten, and Mr. Groner and myself.

Q. What company was the other gentleman with?

[Tr. A-399] A. Weyerhaeuser.

Q. Where was the meeting held?

A. At the Marriott Motel near Washington.

Q. Do you know Mr. Duggan?

A. Yes, I know Mr. Duggan.

Q. Do you recall whether he was present at it?

A. I don't believe he was but I can't say for sure. It seems to me that Mr. Duggan was transferred out of their Baltimore plant just about that time. I don't believe he was but he might have been. He was with that company.

Q. Do you recall what account was involved?

A. Yes, sir.

Q. What was the name of the account?

A. Gwaltney, Inc.

Q. To the best of your recollection can you tell us what the conversation was?

A. Well, it was—

Q. The substance of this. We don't expect word for word but the substance of it.

A. Just what I related to you. Apparently Continental had asked Weyerhaeuser for the past market at Gwaltney and had submitted prices to Gwaltney that were considerably more attractive to Gwaltney and presumably and had been awarded Gwaltney's business. Weyerhaeuser naturally was unhappy that they no longer had the business. I believe we admitted that [Tr. A-400] we had taken it at a lower price, or Continental did.

Mr. Helms: I can't hear what the witness says.

The Witness: I had just come with the company and this action had taken place beforehand and that was the general gist of the conversation.

By Mr. Bernstein:

Q. Did Mr. Groner participate more in the conversations than you did?

A. I wouldn't say that he did more or less.

Q. Was any statement made concerning the conduct of Continental Can regarding the receipt of market information and quoting a more favorable price?

A. Well, in this instance I think we are or Continental, in effect we stated that we wanted to get the account back, that is the reason we had quoted a lower price. We wanted the business.

Q. Get it back from whom?

A. From Weyerhaeuser. They were supplying them before.

Q. What did Weyerhaeuser say with regard to it?

A. Well, they actually didn't have much to say. They subsequently made an attempt to take the account back but they were just a little indignant that we had taken this account.

Q. Was your office at Richmond at the time?

A. Yes, sir, I had just gone with the company.

Q. And Mr. Groner's office was where?

[Tr. A-401] A. He was at Richmond.

Q. How about the two gentlemen from Weyerhaeuser? Where were their offices?

A. Baltimore.

Q. What were the circumstances under which you met at the Marriott Motel?

A. Well, I am not exactly sure. It seems to me we drove up there.

Q. By pre-arrangement? Did you expect to meet them there or was it an accidental meeting?

A. No, I think they had called us and said they were going to be there or something and wanted to know what we had done. I am not sure, because, as I said, I had just come with the company and apparently they had, apparently this arrangement was made somehow. I just can't say for sure exactly how it was because I was just coming with the company and I was sort of going along for the ride.

Q. Are you able to state whether it was the purpose of the meeting to explain what had occurred with regard to the quotations submitted to the Gwaltney account?

A. I guess basically that was the purpose of it, yes.

Q. What was explained on behalf of Continental Can?

A. I think that perhaps Continental had previously denied that they had quoted a lower price and possibly now admitted it.

.

[Tr. A-402] Q. Do you recall any other meetings with competitors concerning quotations to customers after 1961?

A. I don't recall any more, Mr. Bernstein.

Q. Do you recall any meetings concerning set up charges other than the ones that we have already discussed prior to 1961?

A. No, sir. I don't recall any.

.

Q. To your knowledge, have there been any price lists for distribution to customers concerning the price of other corrugated shipping containers.

A. You mean other—

Q. —Than apple boxes.

A. Yes, sir.

Q. What were those?

A. We prepare price lists of transfer and storage containers, or we have in the past.

Q. What company was that?

A. Continental.

Q. What about can boxes?

A. Definitely can boxes. I forgot that. I guess that is the major list that we publish.

Q. Does Continental publish that price list?

[Tr. A-403] A. Yes, sir.

Q. And banana boxes, does Continental publish a price list?

A. We have published a price list locally in my district. I don't think it is like the can list but wide in scope.

Q. How about transfer storage boxes?

A. We have done that locally in our district.

.

Q. Did you mail those lists or make those lists available to any of your competitors?

A. I probably did. I probably mailed them to my competitors around Richmond, nearby. We sold these boxes in Virginia mostly.

Q. What was your purpose in mailing?

A. Well, it was simply to advise the market, sellers and buyers, of our prices.

Q. Did you do the same thing with banana boxes?

A. I think we did.

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[Tr. A-301]

Monday, March 2, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendants: Each of the Defendants was represented by one or more counsel as appears of record, with the exceptions as stated by Mr. McNeill Smith.

DEPOSITION OF ROBERT GRONER, JR.

(PX-17)

[Tr. A-302] Q. What is your present occupation, Mr. Groner?

A. I am self-employed.

Q. In what business?

A. Consultant.

Q. In what industry?

A. Corrugated.

Q. And by whom or with what company were you last associated?

A. Continental Can.

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[Tr. A-303] Q. When did you retire from the Continental Can Company?

A. On March 31, 1963.

Q. And at the time of your retirement, what position did you hold?

A. I was the Regional Sales Manager, of the Southern District.

Q. And would you describe your duties in that capacity?

A. I was in charge of seven sales offices, one located in Richmond, Martinsville, Atlanta, Jackson, Mississippi, New Orleans, Tyler, Texas, Aida, Oklahoma.

Q. And were there certain specified plants of Continental Can that furnished the corrugated shipping containers sold by those offices that you mentioned?

A. Yes, there was a plant at each location.

.

[Tr. A-304] Q. What responsibility, if any, did you have in connection with pricing during the period up through March 31, 1963, when you were Regional Sales Manager of the Southern [Tr. A-305] District?

A. Well, I have a district sales manager at each location, who actually had charge of the pricing in his district. I was travelling overseer and I went and visited them on a fairly frequent schedule, and, of course, general policies were supposed to be laid down by me.

Q. And did your company, during the period when you were Regional Sales Manager of the Southern District, have any general policy concerning the exchange of information with any competitor concerning a price charged a specific customer?

A. Well, I don't recall the company had any general policy on that subject at all. We left that entirely to the jurisdiction of the district sales manager.

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Q. Do you recall, Mr. Groner, whether you had any knowledge about that price increase in or about July 24, 1961?

A. Yes. Whenever a plant operates at capacity the first thing you do is weed out the dogs and keep the better stuff. In that way you will automatically raise your general price level. I also believe, I am not quite positive, there was a paper increase about that time or just before that and normally we try to inject the increase in raw material into the price.

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[Tr. A-308] Q. Mr. Groner, I show you the complaint filed in this action and ask you to state whether or not you personally gave or received information from the representatives of the defendants listed in this complaint concerning the prices that your company charged a specific customer for corrugated containers or concerning the price that such competitors charged a specific customer for corrugated shipping containers and ask you to do that, each defendant separately.

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The Witness: Container Corporation of America, I have talked to Bill Colvin, J. D. Evans.

Albemarle Manufacturing Company, A. J. Bagley.

Carolina Container Company, to the boy who owns it—
[Tr. A-309] I will come back to that one.

Crown Zellerbach, Lee Ross.

Dixie Container, Herb Mitchell.

Dixie Container Company of North Carolina, I never talked to them.

Inland Container, Barney Roberts.

International Paper Company, Hugh Reid.

Mead Corporation, Virgil Shutze.

Miller Container Corporation, Kyle.

Owens-Illinois Glass, Rosenbaum.

St. Joe Paper, not at all.

St. Regis Paper, Diggs.

Tri-State Container Corporation, Alan McDonald.

Union Bag-Camp Company, Butler.

West Virginia Pulp and Paper, Orcutt.

Weyerhaeuser and Waterbury, I haven't talked to them.

Q. Do you know Mr. C. T. Ingram?

A. Ingram, that is the man's name.

Q. From what company,

A. Carolina Container.

Q. Do you know Mr. Diggs' first name at St. Regis?

A. I think it is William; they call him Bill.

Q. Do you know Butler's first name at Union?

A. John.

[Tr. A-310] Q. And could you specify during what period of time you spoke to these individuals concerning a price charged a specific customer or a price they charged a specific customer?

A. Well, some of them go back to the beginning of my tenure in this business. Like Bill Colvin, I have known ever since I have been in the business, and quite a few others. Some of them came later. They weren't in the business at that time.

Q. Was this during the period of time when you were regional manager of the southeastern district?

A. Both as local manager and regional manager, yes.

Q. So that would cover the period of time?

A. 1940 to 1963, less three years I was in Cleveland.

Q. And how were most of these conversations carried on, by phone or in person or by mail?

A. Telephone mostly, and sometimes you would meet them around various places, at box meetings, and talk to them.

Q. What were the occasions when you would request a price concerning a specific account?

A. Well, if I had no idea as to a price, I would try to get some idea from them.

Q. How would you ascertain who to call, which competitor to call?

A. Well, the salesman always gives you or gives his local manager on a sales call information, who is his competition [Tr. A-311] in the account.

Q. How does he ascertain that?

A. He asks the buyer.

.

Q. Well, was it the general rule that you knew that—you knew what the competitor was charging a specific customer?

A. As a general rule you know.

Q. How did you know that?

A. That is experience, it is what you get paid for.

Q. And did that information come to you from the competitors in these telephone calls?

A. Sometimes competitors, and sometimes from the buyers.

Q. On what occasions would you seek it from a competitor and not from a buyer? Where there any occasions?

A. There are a lot of times you seek them from both and you always try to know as much as you can possibly know.

Q. And what would you do with the information when you got the information from a customer and you also got the information from a competitor, what would you do with that information?

A. Well, if they had the same, you would know it was correct and if it was different then you had to decide which one was lying.

Q. And on those occasions where they were the same, then what would you do?

[Tr. A-312] A. You would know that that was the price, and then you could either cut it, or raise it, or quote the same.

Q. And did you personally have any policy with respect to whether you would quote it, or cut it or quote the same on those occasions where the customer's information coincide?

A. No, that was generally left to the district sales manager and how much he needed business to run his plant.

Q. And how about you personally, sir, during the period of time that you had responsibilities?

A. If I needed the business, I would cut it.

Q. And on those occasions that you did, did you inform the competitor from whom you had received the information?

A. Nope.

Q. Had there been any change in your company's practice of exchanging this information, as of March 31, 1963, when you retired?

A. No, not that I know of.

Q. And what if anything can you tell us about the frequency with which you would make or receive these telephone calls during the period when you were regional sales manager?

A. They were very infrequent, when I was area sales manager, because you left that up to the district sales manager.

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[Tr. A-313] Q. Since 1940 your company used the Inland manual recently; is that correct?

A. No, that is not correct, because in different areas you use different manuals.

Q. Let us take Southeastern United States and that means the States that I enumerated.

A. Yes.

Q. Florida, Virginia, North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Kentucky. Was there one manual used by your company from 1961 to 1963?

A. No.

Q. Which manuals did they use?

A. Used both the Old Dominion and Inland.

Q. Where did they use Old Dominion and where did they use Inland?

A. Old Dominion was used in Virginia.

Q. Inland was used in the other States?

A. Yes.

Q. When you gave or received information concerning Virginia, did you indicate that this applied to the Old Dominion manual?

A. No.

Q. Was it important for you to know whether it did or did not?

[Tr. A-314] A. No.

Q. Supposing someone were using the Inland manual. Would that make any difference?

A. It would break back to approximately the same price.

Q. Prior to the Inland manual in the Southeastern States, other than Virginia, what manual was used by your company?

A. I think preceding the Inland, the Kipnis or National manual was used.

Q. National Container?

A. Yes.

Q. How about the Old Dominion?

A. I don't think that was ever used extensively other than in Virginia.

Q. How about the Gaylord manual?

A. That was used for a short time.

Q. In what States?

A. In the South; all over the U. S.

Q. In the Southeastern U. S.?

A. Yes.

Q. Except Virginia?

A. No, I think we even used it in Virginia.

Q. Is it true that the Gaylord manual was replaced in Virginia by the Old Dominion?

A. I think that is correct.

[Tr. A-315] Q. Do you recall any occasions when you informed a competitor of a price that your company was charging a specific account without the request for that information having been received from a competitor?

A. No.

Q. At one point you were asked something about Continental Can's policy with respect to communications. You are familiar with the 1940 consent decree, are you not?

A. Yes, sir.

[Tr. A-316] Q. Did the company have any policy that you know of with respect to that?

A. We are supposed to abide by it.

[Tr. A-61]

Thursday, March 12, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Skaney, Antitrust Division, Department of Justice.

For the Defendant, Tri-State Container Corporation: D. Newton Farnell, Jr., James A. Weller.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; and Carolina Container Company.

DEPOSITION OF WILLIAM B. BEAMS

(PX-6)

[Tr. A-64] By Mr. Freeze:

Q. With which concern were you connected prior to March, 1963?

A. Tri-State Container.

Q. And for how long, sir?

A. I began with Tri-State on May 15, 1962.

Q. In what position?

A. As a part-time sales representative for Tri-State Container and at the same time, renewing contracts of mine in the hope of bringing in some business to the new plant that we were beginning to build in Martinsville.

Q. Now, with whom were you employed before May, 1962?

A. Continental Can Company, Incorporated.

[Tr. A-65] Q. Now will you tell me again what was your position again with Continental Can?

A. With Continental Can I maintained the title I had of Division Manager for possibly eighteen months and in that capacity I had charge of both sales and production. In about April of 1958—excuse me—sometime in the next ten

or twelve months Continental's policy was to separate sales and production and I was asked which I preferred to do, be a plant manager or a sales manager and I chose sales. I was sales manager at Martinsville by title from possibly May of 1957 until about April of 1958 and the sales manager of Richmond was transferred to New York and we had what I term a stretch out program and I inherited the Richmond sales district as sales manager as well. Then January 1, 1962, I was made a regional sales manager with transfer to headquarters in Jackson, Mississippi.

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[Tr. A-67] Q. During the time you were employed with Continental Can Company, did you have occasion to use any form of manuals in connection with computing prices?

A. Yes.

Q. Would you designate which manual or manuals you may have used?

A. Basically they are all the same, all that I have ever seen. This dates back to when I started in the business, we had one, I don't know whose it was or where it came from, but it looked like the same ones I see today with minor changes reflecting inflation or what have you, cost of materials, and so forth.

I have had in my possession the National Container Manual, the Old Dominion Manual, the Gaylord Manual, Inland Container Manual, and company manuals, either cost manuals or estimating manuals.

Q. In connection with the National Container Manual, the Gaylord Manual, and the Inland Manual, were these used at different periods or interchangeably during the same period?

A. Basically my people—not basically—my people [Tr. A-68] were always instructed to use the more simple one, which was the National Manual, which was very much tailored along the lines of the one to which we had been accustomed.

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Q. Mr. Beams, during the period when you were employed with Continental Can Company, were you requested

by any competitors or their representatives to furnish price information on specific jobs?

A. Yes.

Q. Did you on those occasions furnish such information?

A. Yes.

Q. Would you tell us, please, where you acquired the information to supply the person requesting it?

A. Well, we had sales record cards. They changed from time to time, but each individual specification had a card with certain pertinent data about the box, its style, how it was printed, how it was bundled, the delivery, and so forth, and the price could have been on the card in one way, a base price plus set-up, or in certain quantities, whichever the customer might have requested that we quote or supply.

Q. Mr. Beams, when you received such a request, was the request for the most recent price at which you had sold to a specific customer?

A. Yes.

Q. Was this confined to a sale which had been [Tr. A-69] consummated or did it also include cases where you had merely made a quotation but for some reason may not have completed the sale. First—

A. Will you repeat your question, please?

Q. Yes. I asked was this price information which you supplied confined to completed sales, or would you give information where your employer may have quoted but for some reason may not have completed the sale?

A. It would depend on what the man asked for.

Q. Am I to understand that depending on his request you might have furnished either?

A. Depending on his request, I might have furnished either.

Q. Now, on these occasions was the information in terms of an end or overall price or in any other terms?

A. What he asked for.

Q. Other than an end or overall price in what other form is this information given?

A. Well, he could ask me for a level in an account. Do you mind if I inject a hypothetical situation?

Q. I will be glad to have you do that.

A. Let us say the customer has 500 boxes that he buys—

this is not unusual. Rather than his asking me 500 end prices, he would probably ask me, "What is your level?"

Q. Now, Mr. Beafns, on these occasions, when you supplied [Tr. A-70] this information to representatives of your competitors, did you always give accurate information as disclosed in your files?

A. Yes.

Q. Did you, during this period, while you were with Continental Can Company, request similar information from representatives of your competitors?

A. Yes.

Q. On these occasions, was the information given in the form of an end or overall price or in other forms?

A. Well, this is dependent on what I was seeking, how the customer bought the boxes. He had probably told me to quote him in one thousand lots, two thousand lots, three thousand lots, or twenty thousand lots, or he might have requested that we quote him base plus set-up. Then I asked for the information I wanted.

Q. Mr. Beams, again referring to the companies named as defendants in this action, I would like to have you, as I read each company, tell me the names of any persons, to the best of your recollection, who have requested price information on specific jobs from you during this period. Is that clear?

A. And the period?

Q. The period when you were with Continental Can.

A. Well, bear in mind before I answer that there have been many changes in management in all of these companies, [Tr. A-71] and I will answer this to the best of my ability.

Q. Container Corporation of America.

A. As we know Container today—let us confine ourselves to the period not past October 14, 1963.

Container Corporation of America, Mr. J. D. Evans, Adolph Clay, Mr. Norman Alday, perhaps a Mr. Theabold.

Q. Now have you also requested information as to specific jobs from these persons?

A. Yes, I would say I have.

Q. Albemarle Paper Manufacturing Company.

A. Mr. Maury Dozier and Mr. A. J. Bagley.

Q. In respect to these two individuals, have they re-

quested from you price information on specific jobs?

A. Yes.

Q. And have you requested such information from them?

A. Yes.

Q. Carolina Container Company.

A. Mr. Holbrook, Mr. Ingram, and Mr. Webster.

Q. Now have you both given price information on specific jobs to these individuals and received it, also?

A. Yes.

Q. Crown Zellerbach Corporation.

A. Mr. Lee Ross, Mr. George King, and Mr. Gordon Clark.

Q. And in connection with these individuals have you both given price information on specific jobs and received [Tr. A-72] price information on specific jobs from these individuals?

A. Yes.

Q. Dixie Container Corporation.

A. Mr. H. L. Mitchell, at one time Mr. J. B. Johnson, Mr. Ernie Downes, and Mr. Schwind.

Q. Now in connection with these individuals, have you received this information from them and also given similar information to them?

A. Yes.

Q. Dixie Container Corporation of North Carolina.

A. I am sorry, I included Mr. Schwind.

Q. Inland Container Corporation.

A. Yes. Mr. Roberts, Mr. Hogan and Mr. Davis.

Q. And in the case of each of these individuals have you both received price information on specific jobs and given it?

A. Yes.

Q. International Paper Company.

A. Mr. Reid and Mr. Ennis.

Q. And also as to these individuals have you both given and received price information on specific jobs?

A. Yes.

Q. The Mead Corporation.

A. Mr. Wainscott and Mr. Pridgeon. I have forgotten the period but I could say Mr. Bloom.

[Tr. A-73] Q. As to these individuals, have you both received and given price information on specific jobs?

A. Yes.

Q. Miller Container Corporation.

A. Mr. Kyle, Mr. Noftsinger.

Q. And you have both given and received price information on specific jobs as to these individuals?

A. Yes.

Q. Owens-Illinois Glass Company.

A. Mr. Rosenbaum, Mr. Brittain.

Q. And you have both given and received price information on specific jobs in these companies with these individuals, have you, sir?

A. Yes.

Q. St. Regis Paper Company.

A. Yes. Mr. Diggs and a Mr. Petrie.

Q. Would that include instances where you have both given and received price information on specific jobs?

A. Well, I don't remember any, but it is conceivable.

Q. As to Mr. Diggs, is it your best recollection that you have given price information on specific jobs?

A. Yes.

Q. Is it your best recollection that you have or have not received such information?

A. I have.

[Tr. A-74] Q. Mr. Beams, is it your best recollection that you have or have not given information on specific jobs, to Mr. Petrie?

A. I have.

Q. What is your best recollection as to receipt of such information?

A. To my best recollection I have received information.

Q. Tri-State Container Corporation.

A. Mr. Alan McDonald.

Q. And in the case of Mr. McDonald, have you both given and received price information on specific jobs?

A. Yes.

Q. Union Bag-Camp Paper Corporation.

A. Mr. Butler, now deceased, Bob Day, Frank Grimes, and Mr. Pritchett.

Q. As to those individuals, have you both given and received price information on specific jobs?

A. Yes.

Q. West Virginia Pulp and Paper Company.

A. Mr. Dave Orcutt and Mr. Alan Holt.

Q. As to these individuals, have you both given and received price information on specific jobs?

A. Yes.

Q. Weyerhaeuser Company.

A. Mr. Ivan Wood, Mr. Clayton, and Mr. Elliott, and [Tr. A-75] Mr. Hinshaw.

Q. Now, as to these individuals, have you both received and given price information on specific jobs?

A. Yes.

Q. Mr. Beams, in clarification of the question which has been asked, in regard to the individuals which you have identified in your testimony as to these previous companies, as to these other defendants in this action, in all instances to which we have referred was the price information the most recent price charged or quoted to a specific customer?

A. It could have been either, depending on what the man asked for.

Q. Either?

A. Yes.

Mr. Farnell: But they are all relative to specific customers.

The Witness: That is true. I think there is an inference here that all boxes are bought on a bid, when a man needs boxes, when you say a specific job. There is perhaps a little difference in terminology.

[Tr. A-78] Q. Mr. Beams, on these occasions when you either gave information, price information, regarding specific customers or received such information, did this take place by telephone or personal encounter or both?

A. Generally, by telephone.

Q. Did this involve long distance calls at times?

A. Yes, it did.

Q. Will you tell us about any occasions other than telephone where such price information was either given or received by you?

A. Well, in traveling to meetings, whether they were formal Fibre Box meetings or other meetings, wherein we had an interest and you might have to fly three or four hundred miles to spend a night, you naturally ran into not only competitors, they were competitors and friends—actually, there was a man here yesterday testifying that I used to sell boxes to who was a purchasing agent, so he has been a friend for a long time. You meet where you are staying, so and so, you are away from home. "Come have a drink," "Meet you in the bar," three or four other friends and competitors come in and you sit down and shoot the bull.

I guess, naturally, your business being boxes, you probably talk boxes, you might talk about a specific customer [Tr. A-79] and his price because we might have reason to believe that the customer is trying to trick both of us and that he wants a better price than he deserves and we might say he told us you did so and so, did you? Or what is your level? I mean this could come up in a personal contact as easily as on the telephone.

[Tr. A-493]

Friday, March 13, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Miller Container Corporation: Robert P. Buford, Richard G. Joynt, Charles F. Blanchard.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Carolina Container Company, St. Regis Paper Company and Waterbury Corrugated Container Company.

DEPOSITION OF W. M. NOFTSINGER

(PX-25)

[Tr. A-494] Q. Mr. Noftsinger, will you state your full name and address, please?

A. William Martin Noftsinger, 726 Wildwood Road, Roanoke, Virginia.

Q. Your employer and your business address?

A. Miller Container Corporation, 802 Kyle Avenue, Roanoke, Virginia.

Q. Mr. Noftsinger, will you trace for us the history of your employment with Miller, positions, dates and places?

A. I first came with Miller Container in March of 1955 as Sales Manager. In approximately '57 I was made Secretary of the Corporation and Sales Manager. In 1961, October, 1961, I was made Vice President and Sales Manager and in December of 1963, I was made President and General Manager.

[Tr. A-496] Q. Mr. Noftsinger, during this period, have you had occasion to contact your competitors to request the price which they were then charging a specific customer for corrugated containers in the Southeast United States?

A. Yes, we contacted them with respect to the last price they charged the customer, yes, sir.

Q. On those occasions, sir, for what would you ask? How

would you ask for this information?

A. Just about the way you phrased the question to me, sir, what the last price was they charged a particular customer.

[Tr. A-497] Q. During this period, sir, have there been occasions when representatives of your competitors have contacted you to ask for the same information.

A. Yes, sir.

Q. Mr. Noftsinger, I show you a copy of the complaint filed in this action and with reference to the list of Defendants appearing on the first page thereof, I would like to ask you the names of the individuals with each of those companies to whom you have given or from whom you have received the pricing information which you have described with respect to a specific customer during the period to which we have reference.

Container Corporation of America?

A. Bill Colvin, J. D. Evans, and Dolph Clay.

Q. Albemarle Paper Manufacturing Company?

A. Mr. Bagley and Mr. Maury Dozier.

Q. Carolina Container Company.

A. Mr. Ingram and Mr. Holbrook.

Q. Continental Can Company, Incorporated?

A. Mr. Groner, Mr. Johnson, Mr. Beams.

Q. Crown Zellerbach Corporation?

A. Mr. Clark.

Q. Dixie Container Corporation?

A. Mr. Mitchell and Mr. Schwind.

Q. Dixie Container of North Carolina?

[Tr. A-498] A. Mr. Schwind is with Dixie Container of North Carolina.

Q. Inland Container Corporation?

A. Mr. Roberts.

Q. International Paper Company?

A. Mr. Hugh Reid.

Q. The Mead Corporation?

A. Mr. Waincott and Mr. Pridgen.

Q. Owens-Illinois Glass Company.

A. Mr. Rosenbaum and Mr. Brittain.

Q. St. Joe Paper Company?

A. I don't think I have talked with anyone at St. Joe's.

Q. St. Regis Paper Company?

A. I don't recall talking with anyone with St. Regis.

Q. Tri-State Container Corporation?

A. Mr. McDonald.

Q. Union Bag-Camp Paper Corporation?

A. Mr. Wulff, Mr. Pritchett.

Q. West Virginia Pulp and Paper Company?

A. Mr. Orcutt and Mr. Holt and Mr. Ed Bauer.

Q. Weyerhaeuser Company?

A. Mr. Ivan Wood, Mr. George Elliott.

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Q. On what occasions, sir, under what circumstances [Tr. A-499] would you seek this information from a competitor?

A. When I was interested in finding what the past market was in that particular instance.

Q. When would you be interested in that information?

A. When I was trying to verify what the customer may have told me or told one of our representatives.

Q. Would there be any other occasions?

A. Whenever we had the occasion to figure a price for the particular customer, yes, sir.

Q. On those occasions when you received calls from your competitors asking for the price which you were then charging a specific customer, did you give the information requested?

A. Yes, sir; I gave the information, the price at which we last sold the customer.

Q. Did you obtain this information from records in your company?

A. Sometimes, yes. Sometimes from memory.

Q. When you referred to record, to what records, or what records did you use?

A. Our general sales file.

Q. Of what is that comprised?

A. It is comprised of all the accounts that we sold boxes to.

Q. What forms make up this file?

[Tr. A-500] A. We have a pricing form by which we have arrived at the price we have sold the account.

Q. Does this pricing form contain the price of all the various boxes which you have sold to that account?

A. All of the various boxes are on an individual form.

There is one box on each form, yes, sir.

Q. Does this form contain an end price?

A. Yes.

Q. Is this the price which you supplied to your competitor?

A. Yes, sir.

Q. Does this form contain a board level or board multiplier?

A. Yes, sir.

Q. Have there been occasions when you have supplied that figure to your competitors?

A. Yes, sir.

Q. Under what circumstances would you supply one rather than the other?

A. I would say it would probably depend on how many items were involved. If it were a great deal of items, we would probably give the board multiplier. If it was a single item, perhaps an end price. I would not say there was a general rule.

Q. Is there any reason why when there were several [Tr. A-501] items you would probably use the, I don't know what phrase you used, did you say multiplier?

A. Yes, sir.

Q. Is there any reason why when there were several items you would supply the multiplier to your competitor?

A. The only reason I could think of would be convenience and time-saving.

Q. Would this multiplier enable him to compute the price of the several items?

A. Yes, sir, I think so.

Q. How would he be able to do that?

A. We would be able to do it by figuring the multiplier with our pricing manual.

Q. You merely assumed he would be able to do the same, is that right?

A. I would assume so, yes.

Q. On all occasions when you have supplied information to a competitor, did you have knowledge that a sale had been consummated at that price?

A. No, sir, because I didn't know what his price was.

Q. I am sorry. I am not making myself clear. When you supplied the information to a competitor, did you know that the Miller Container Corporation had actually

sold containers to the specific customer in question at that price?

A. No, sir. I did not. We don't sell all the boxes [Tr. A-502] we quote. Sometimes a man was checking to see if we had cut, to verify what a customer may have told him, and we may not have sold at that price.

Q. But you would give this information to a competitor?

A. Yes, sir.

Q. Although you may not have sold at the price?

A. Yes, sir.

Q. On these occasions, sir, was any notation made on your records regarding the phone call you had received?

A. No, sir.

Q. You have no record of these phone calls?

A. No, sir.

Q. On those occasions when you gave this information to a competitor, was it of any benefit to your company?

A. I don't see how it would have been. We didn't make any money by doing so, no.

Q. Did you have any reason for doing so?

A. He had requested it, so we gave it to him.

Q. Did you ever refuse this information?

A. No, sir.

Q. Did you have any reason for not refusing the information?

A. No, sir. I didn't have any reason for not refusing.

Q. On those occasions, sir, when you have obtained [Tr. A-503] this information from a competitor, were you able to use it in computing the price of a box for a specific customer involved?

A. Yes, sir.

Q. Sir, how did these contacts take place between yourself and your competitors?

A. By phone.

Q. Was that on all occasions?

A. Yes, sir.

Q. You have no recollection of having mailed this information to a competitor or having received it from him through the mail?

A. We may have received some through the mail, yes,

sir.

Q. What do you recall about receiving some through the mail?

A. It would come in an envelope from the competitor and it would have been at my request that he had mailed that to me.

Q. Do you recall the competitor who mailed this information?

A. No, sir, I don't.

Q. Would this have been rare relative to the number of instances?

A. Yes.

[Tr. A-504] Q. In those instances where you gave this information to a competitor or obtained it from him by telephone, were long-distance calls involved?

A. Yes, sir.

Q. Both giving and receiving the information?

A. Yes, sir.

Q. On those occasions, sir, when you have obtained from a competitor the price which he was then charging a specific customer for a certain specification, in the majority of instances what price did you then quote to the customer?

A. I quoted a price approximately the same as he had charged the customer.

Q. In the accounts which you serviced during that period were there other suppliers of corrugated containers supplying those accounts at the same time?

A. Yes.

Q. Was that true of all of the accounts which you supplied?

A. I would say it was true of the majority of the accounts.

Q. In some of these accounts was there more than one supplier supplying the identical box at the same time?

[Tr. A-505] A. Yes, sir.

Q. Mr. Noftsinger, at any time during the period from March 1955 when you became sales manager of Miller Container Corporation through October 14, 1963, have you found yourself in the presence of your competitors when the subject of prices of corrugated containers in the South-eastern United States was mentioned?

A. Yes, sir.

Q. What do you recall about those occasions, sir?

A. Well, on one occasion it was a firm advised that they had reduced their price some week before on a particular account.

Q. Which firm was that that advised you?

A. That was West Virginia.

Q. Which account was that?

A. Hygrade in Richmond.

Q. Do you recall what was said on that occasion by the [Tr. A-506] West Virginia representative?

A. No, sir, I don't. That was the result. What he actually said I don't recall.

Q. Do you recall approximately how many people were present?

A. Four or five—from four to ten, let me put it that way.

Q. Do you recall that anyone commented after they had been advised of this decrease?

A. No, sir.

Q. Do you recall the circumstances under which this meeting took place? Do you recall where it was?

A. It was in Richmond.

Q. Where in Richmond?

A. At a hotel.

Q. Do you know the hotel?

A. No, sir, I can't say that I do know the hotel although from previous testimony before the Grand Jury I think it was the Raleigh Hotel and I believe that is where it was.

Q. I would only ask for your own recollection.

A. I don't recall which hotel it was.

Q. Do you recall approximately how long the meeting lasted?

[Tr. A-507] A. No, sir, I don't.

Q. Do you recall arriving at the parlor room?

A. No, sir.

Q. Do you recall leaving?

A. I left but I don't recall the circumstances when I left.

Q. Do you have any recollection of leaving? Did you arrive in the company of another person?

A. I don't recall.

Q. Do you recall whether another person left at the time you did?

A. No, sir, I don't.

Q. Prior to this meeting and within, let us say, a month of that meeting had you had occasion to call the West Virginia Pulp and Paper Company regarding that account?

A. Not that I know of, not that I can recall.

Q. Had anyone from West Virginia called you?

A. Not that I recall, no, sir.

Q. Do you recall the amount of the decrease that was announced?

A. I think it was five percent.

Q. Do you recall what action you took subsequent to this meeting with regard to the Hygrade account?

[Tr. A-508] A. Yes, sir, I reduced my prices in order to continue to serve the account.

Q. Do you recall the amount of the decrease that you made?

A. No, sir, but I would assume it would be approximately five percent because I think we were competitive prior to the decrease and I was competitive afterwards.

Q. Do you recall any other occasions when you have been in the presence of your competitors during this period when the subject of price was mentioned?

A. On one other occasion at a meeting in Richmond the subject of price was mentioned. It was more a discussion I think of the recent increase in the cost of liner board, however, the need for a price increase as a result of the increase in liner board prices was mentioned.

Q. Was that a meeting in Mr. Herb Mitchell's office?

A. Yes.

Q. Was Mr. Kyle with you at that time?

A. I don't recall.

Q. Do you recall, sir, whether at that time you indicated—I withdraw that question.

Do you recall whether all the persons present at that time were competitors of yours?

A. Yes, sir, I think they were.

Q. Do you recall, sir, whether at that time you [Tr. A-509] advised what your company planned to do in connection with this liner board increase?

A. No, sir, we did not. We did not advise what we planned to do and no one present, if my memory serves, stated what they would do as a result of this liner board increase.

Q. Do you recall a phone call being made on that occasion?

A. Yes, sir, there was a phone call made.

Q. What do you remember about the phone call, sir?

A. As I recall, the phone call was made to determine whether or not anyone had published a new manual as a result of this paper increase.

Q. Do you recall to whom the phone call was made?

A. No, sir, I do not.

Q. Do you recall the company to which the phone call was directed?

A. I have a recollection that they called Mr. Ingram at Carolina Container to see if he had received such a manual or manuals. His answer was negative.

Q. Do you recall who made the phone call?

A. No, sir, I don't.

Q. Do you recall that when the phone call was first made the person making the call was unable to reach the party that he was attempting to reach?

A. No, sir. He did talk to Mr. Ingram, as I recall.

[Tr. A-510] Q. Do you recall waiting for a party that had been called to return the call?

A. No, sir.

Q. Do you recall whether subsequent to that meeting and within, let us say, not more than two months, your company attempted to increase its prices?

A. No, sir, I don't recall whether there was an increase

following that. I don't recall. I know there was no increase as a result of that meeting.

Q. Sir, were there any other occasions which you recall when you were in the presence of your competitors and the subject of prices was mentioned during the period in the complaint?

A. No, sir.

[Tr. A-350]

Friday, March 6, 1964.

APPEARANCES:

For the Plaintiff: Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Carolina Container Company: W. P. Sandridge, Sr., W. F. Womble.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF C. T. INGRAM, JR.

(PX-20)

[Tr. A-352] Q. Mr. Ingram, will you please state with whom you are presently employed?

A. Carolina Container Company, High Point, North Carolina.

Q. Now, I would like to cover your employment up to a period ending October 1963. As of that date, were you in your present position?

A. Yes, sir.

Q. What is the title of your present position?

A. Vice President, Treasurer and General Manager.

Q. How long were you in that position up until October 1963?

A. Ten years, with that title.

Q. And prior to that were you with the same employer?

[Tr. A-353] A. Yes, sir.

Q. In what position?

A. Assistant Treasurer and Assistant Manager.

Q. And for how long?

A. I would say 15 years or more.

Q. Now, does this period which you have covered cover your entire business career in the container industry?

A. I have been in the container business approximately 31 years with the same company.

[Tr. A-356] Q. Do you recall how you acquired that manual?

A. I do know that one of our larger customers gave us a copy of this manual when this first came out. As I say, I don't remember the date. We did secure one from Inland Container Company, also.

[Tr. A-359] Q. Mr. Ingram, in determining prices to be quoted to customers or prospective customers do you at times or have you at times contacted representatives of your competitors?

A. Yes, sir.

Q. Could you tell us for what purpose we have been contacted?

A. First, Mr. Freeze, I might clarify that. I have talked to some of our competitors in a very rare case but I am not too active in sales but I do know a little bit about what is going on but the calls that I have made or that have been received were to get a past market price.

Q. Again, I would like to go through the companies listed as defendants in the complaint and request that you indicate, as I read each company, which company, which [Tr. A-360] defendant employees have been contacted by you or have contacted you to give or receive a price for a specific customer? Is that clear?

A. Yes, sir.

Q. May I add, during the period 1955 to 1963?

A. Yes, sir.

Mr. Sandridge: You mean personally?

Mr. Freeze: Yes, sir, I am asking personally.

By Mr. Freeze:

Q. Container Corporation of America?

A. Yes, sir.

Q. Would you indicate what individuals?

A. Yes, sir, Mr. Bill Colvin and J. D. Evans.

Q. Albemarle Paper Manufacturing Company?

A. Tony Bagley.

Q. Is he the only one you recall?

A. There is another fellow that I might have talked

with. Dozier, I believe, Mr. Dozier possibly. I am not sure.

Q. Continental Can Company?

A. Yes, sir, Mr. Robert Groner, Mr. Bill Beams when he was with that company and Mr. Johnson.

Q. Crown Zellerbach Corporation?

A. Yes, sir, Mr. Gordon Clark.

Q. Dixie Container Corporation and Dixie Container Corporation of North Carolina?

[Tr. A-361] A. Herb Mitchell.

Q. Inland Container Corporation?

A. Mr. Barney Roberts and Mr. Frank Talbot.

Q. International Paper Company?

A. Mr. Hugh Reid and Spike Ennis.

Q. The Mead Corporation?

A. Bob Wainscott.

Q. Miller Container Corporation?

A. Mr. Harold Kyle.

Q. Owens-Illinois Glass Company?

A. Mr. Ken—I can't think of his last name. He is the General Manager in Salisbury.

Q. Would it be Rosenbaum?

A. Rosenbaum, yes, sir, and Mr. Brittain.

Q. Now have you had any contacts with representatives of St. Joe Paper Company?

A. No, sir.

Q. Have you had any contacts with St. Regis Paper Company personally?

A. Yes, Mr. Bill Diggs.

Q. Tri-State Container Corporation?

A. Yes, sir, Alan McDonald.

Q. And Union Bag-Camp Paper Company?

A. Yes, sir, Mr. John Pritchett, Ed Faulkner and Mr. Frank Grimes.

[Tr. A-362] Q. West Virginia Pulp & Paper Company?

A. Yes, sir, Mr. Alan Holt.

Q. Weyerhaeuser Company?

A. Mr. Ivan Wood and another that I can't recall. It might be Elliott.

Q. What contact did you have with the personnel of the Old Dominion Box Company when they were in the container business, if any?

A. Mr. Ernest McKorkle and Ivan Wood.

Q. Have you had any contact with personnel of the Waterbury Container, Corrugated Container Company?

A. Yes, Joe Reynolds.

Q. Mr. Ingram, previously, when I started through this list I indicated to you I believe that the contacts I was asking you about were concerned with instances when either you had received or given a board level, I mean, a price, pricing information, concerning a specific customer. Was that your understanding?

A. Will you state that again, Mr. Freeze? I lost you about in the middle of it, I am sorry.

Q. Yes, I said just before I read the list of [Tr. A-363] defendants the last time I asked you to indicate to me which companies and personnel you had had contact in connection with the giving or receiving of price information on specific customers?

A. Yes, sir.

Q. Was that clear to you?

A. Yes, sir.

Q. Now the names you gave me and the companies were on that understanding, is that right?

A. Yes, sir.

Q. Now, Mr. Ingram, concerning ourselves just with occasions when you gave or supplied a representative of a competitor this type of information, would you indicate where you obtained the information to give him?

A. Where we had received this information?

Q. Yes.

A. Well, our salesmen make a very comprehensive report on every call that they make. When a customer of ours requires a quotation our salesmen send in this report, giving the size and complete specifications and tests of the carton that we are to quote on. That is how we arrive at the size of the carton. And at the price we charge, if we have been selling the customer within the last few months or the last prices that we have sold him, if we think that is the market price that is the price we charge.

[Tr. A-364] Q. I am afraid you didn't understand my question. Perhaps I did not phrase it clearly. What I

was asking is this. If you receive a request from a competitor or their representative for pricing information from what source in your own operations do you obtain the information that you gave him?

A. We have a record of every carton we have sold a customer. One customer may have a hundred sizes. On that is a complete estimate on that card. As I say, I very rarely do this but our sales manager keeps up with it, I am not too well informed on it—I apologize for my ignorance on it—but a complete record is listed there, the price we charge that customer, and that is what we refer to. That is how we base our prices.

Q. Realizing that perhaps this is not primarily in your responsibility, how long do you keep this data in years?

A. Well, as long as the customer has the size; now, actually, we started our operations in 1928 and 1929 and we have some card records there that are that old with the records on them.

Q. When you have been requested in the past for a board level or an end price do you supply the current or most recent price?

A. We supply our past market price to our competitor when he requests it.

[Tr. A-365] Q. Would that be your most recent price?

A. It certainly should, yes, sir.

Q. Do you give him the actual price as you have it?

A. The actual price or the actual base?

Q. Well, whatever he asks for?

A. Whatever he asks for. If he asks for the base we will give him the base. If he asks for the price we will give him the price.

Q. As shown in your records?

A. Yes, sir.

Q. Mr. Ingram, in connection with this most recent price which you have stated you do give to competitors at times, is this price restricted to completed sales or might it be made where you have merely made a quotation but not completed a sale?

A. Well, that can be answered several ways. A regular customer of ours we have been selling him all along and supposing he has a new box, we would certainly quote him on the same basis that we have sold him before.

Q. Now have you personally requested this same type of information from competitors?

A. Yes, sir.

[Tr. A-328]

Friday, March 6, 1964.

APPEARANCES:

For the Plaintiff Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Carolina Container Company: W. P. Sandridge, Sr., W. F. Womble.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF CARTER HOLBROOK

(PX-19)

[Tr. A-329] Q. Will you state your full name and address for the record?

A. Carter T. Holbrook, Jr., 1007 Emery Circle, High Point, North Carolina. E-m-e-r-y.

Q. Your employer, sir?

A. Carolina Container Company.

Q. Your position?

A. Sales Manager.

Q. For how long have you been employed in that position?

A. Ten years.

Q. Mr. Holbrook, who, specifically, has the authority to decide on a price in your company?

A. Ours is a small, independent company. We possibly do things different from larger companies. It is a joint understanding between Mr. Ingram and myself. He is appraised on anything that is different, anything that needs special attention. It is a joint decision.

Q. But between the two of you, you share the pricing [Tr. A-330] authority?

A. We share the authority, yes.

Q. Does anyone else have the authority?

A. No, sir.

[Tr. A-333] Q. Mr. Holbrook, do you recall the occasion of the publication of the Old Dominion Manual?

A. Yes, sir.

[Tr. A-334] Q. What do you recall regarding this?

A. Well, Eddie Dillard, I guess his title was General Manager, of Old Dominion, and his lawyers there too, stated on the table were copies of a pricing manual which he, himself, his company was going to follow. They were going to use that manual. If anyone wanted to pick up a copy of it they could.

Q. Do you recall anything further regarding his remarks?

A. No, sir.

Q. Do you recall whether anyone else spoke at this time?

A. No, sir.

Q. Do you recall taking one of these manuals?

A. Yes, sir. We, as a small, independent company, followed the market conditions, we try to do a real good job of hiring salesmen, we have honest, clean-cut boys, we try to teach them how to sell boxes, how to engineer boxes, how to design them, we try to do a real fine job of servicing on our account because we are small, we have no big friends. We have real confidence in our salesmen's ability. But, we have found over the course of time we must be competitive to sell anyone regardless of whom we know. We picked up one so that we would know what Old Dominion was doing.

Q. Was it your intention, at the time, to follow that manual?

A. We discussed that and decided we would sort of play [Tr. A-335] it by ear and if the manual looked like it was taking hold, if other people might be using the same pricing formula, we thought it might be wise for us. We tested the market first.

[Tr. A-337] A. We might have asked for past market from someone.

Q. When you say, "Past Market," sir, what do you mean?

A. Poor English, I suppose. It is the price that boxes sold at. It is the price that someone is selling various cartons for.

[Tr. A-339] Q. Where did you obtain the information that you did give to your competitors?

A. Each customer has a file. In that file are small cards approximately 5 by 7, a white card. That card is the history of that particular box. One customer might have one [Tr. A-340] size, other customers might have 50, a hundred or more furniture accounts.

Each side has a record. On that card is located the complete specifications of the box, that is specifically the size, the test, the joint, the printing, any extras like hand holes, that kind of thing, how we put the box up, bundling. Palletizing, unitizing, and then also it has the price, that is the estimate. On the reverse side of that card every time we enter an order we note down the date, our own internal factory order number, our identification number, the quantity the customer ordered and the price we charged that customer. When I receive the call I have in my office two girls and one of them comes over and I either write the name down or stop and tell them and they get that information and bring it back.

I look at the cards, reverse them over, see what the last sale was, and give that past information. That is our standard practice.

Q. Has this happened, sir, that you have been asked to give information regarding a customer and there has been a change in his price but yet no sale has been consummated?

A. Yes. In that instance, however, if we have made a change in the price—we have we believe a good group of salesmen who are well trained and follow instructions—when we have a change in price we immediately contact our salesmen [Tr. A-341] and they contact the trade. We do not send out written notices or things like that. It may be that we have had a change in price. The salesman has told the customer and we have not consummated the sale but the customer is aware that his price is changed.

Being a little office and having very few people in the office, we can't naturally estimate every card we have on a moment's notice. It takes time.

Q. Would you have any way of knowing whether or not the salesman had actually delivered the price to the specific customer?

A. Yes, sir.

Q. How would you know this?

A. This is the one thing I am most strict about. We have a small form about three inches high and about six inches long that can be put in the salesman's pocket and they write up every call they make. It does not have to be an epistle, it can be short but it has the pertinent facts about that account. And they mail them daily as I say that is the thing I get upset the most when they don't come in daily because from that information I am able to glean what is happening over the entire area. Now our customer will tell us what the story is. Sometimes we believe them, most of the times we do. Sometimes we are skeptical of the information they give us.

[Tr. A-342] Q. Do you have a policy that the price must have been delivered to the customer before you will give it to a competitor?

A. As a small company we don't set up a whole lot of policies. We have no written policies about anything. Mr. Ingram's office is next to mine. We just holler back and forth all day long or go in. As a general practice it might be that way, yes. It might be that we have had a change and the salesman has not had enough time to get around to everybody.

It is possible.

Q. It is possible that the price would not have been delivered at the time you received the request for information?

A. Possible to this extent. If we were to advise when we make a change—for instance if we were to advise the customer a month ahead we would have more production than we could possibly get out, more customers buying up and the next month we might not be running anything.

Q. It is possible that a price would not have been delivered at the time that you would give it to a competitor?

A. It would be a rare circumstance but it is possible.

Q. On the occasions of your having received these calls have you ever given false information?

A. No, sir, I might add to that, I only give what I am asked.

[Tr. A-343] Q. Have you ever given a price to a competitor where he did not request the information?

A. No, sir.

Q. Has a competitor ever called you to give you a price where you had not requested the information?

A. No, sir.

Q. On occasions when you call a competitor to request a price—on occasions when you have done this during the period to which we have reference what do you ask the competitor?

A. I ask them for their past market, what they have sold the boxes for. It might be the basis or multiplier or level whatever the term might be or it might be an end price.

Q. When you receive that information, is it a common practice to use that same price in quoting to that customer?

A. We treat each account individually. My job of course is to keep orders in the plant through our sales department and do it at a profitable level or they would not keep me there. There have been times when we have gotten the information when we have given the customer a lower price. There have been times when we have given him the same price and there have been times by virtue of a difficult box to run or maybe we were loaded at the time in the plant, maybe there their credit was poor, maybe the man wanted service that we didn't feel was proper, we quoted higher.

[Tr. A-344] Q. What have you done in the majority of cases?

A. In the majority of cases we have followed the general market.

Q. Would that mean that you have quoted the same price?

A. Yes, sir.

We, however, discuss them and make a decision as to whether or not—we make our own decisions as to whether or not we want to follow that price, make it lower or higher.

Q. Mr. Holbrook, with reference to the defendants named in this action, which is limited to the area which we have termed the Southeastern United States and defined as Virginia, North Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky, and with reference to the period from January 1, 1955 to October 14, 1963, I will name the defendants and ask you to name the persons to whom you have given this information or from whom you have received this price information with regard to a specific customer.

Container Corporation of America?

A. Adolph Clay, Bill Colvin.

Q. Albemarle Paper Manufacturing Company?

A. Dozier. I can't recall his first name.

Q. Carolina Container—

A. That is us.

Q. I am sorry.

Continental Can Company?

[Tr. A-345] A. Bill Beams or John O. Johnson.

Q. Crown Zellerbach?

A. Gordon Clark.

Q. Dixie Container Corporation?

A. Joe Schwind and Herb Mitchell.

Q. Inland Container Corporation?

A. Barney Roberts.

Q. International Paper Company?

A. Hugh Reid and Spike Ennis.

Q. The Mead Corporation?

A. Bobby Wainscott and Bert—I am not sure whether it is Pritchard or Pridgen. It is in that neighborhood.

Q. Miller Container Corporation?

A. Harold Kyle, Bill Noftsinger.

Q. Owens-Illinois Glass Company?

A. Ken Rosenbaum and Brittain.

Q. St. Joe Paper Company?

A. No, sir.

Q. St. Regis Paper Company?

A. Petree.

Q. Is there any other person that is in that company?

A. Not that I have talked to, no, sir.

Q. Tri-State Container Corporation?

A. Alan McDonald.

Q. Union Bag-Camp Paper Corporation?

[Tr. A-346] A. John Pritchett, Ed Faulkner, Frank Grimes.

Q. West Virginia Pulp & Paper Company?

A. Alan Holt and Dave Orcutt.

Q. Weyerhaeuser Company?

A. George Elliott.

Q. The Waterbury Corrugated Container Company?

A. Joe Reynolds.

Q. Mr. Holbrook, the Old Dominion Company is not a defendant in this case. Have you ever during the period from January 1, 1955 to October 14, 1963, given or received

price information as to specific customers with anyone employed by the Old Dominion Box Company?

A. To clarify that, you are talking about Old Dominion with locations in Charlotte, Corrugated Division, before Weyerhaeuser bought it?

Q. Yes, sir.

A. Yes, sir.

Q. With whom?

A. Ivan Wood; maybe Alan Clayton. I am not certain on that.

Q. How did you first learn of the publication of the Inland manual?

A. It came through the mail. The first issue came [Tr. A-347] through the mail. The second issue was sent to us by a customer.

Q. Have you received subsequent amendments to that manual?

A. The amendment did not come to us from Inland as I recall but we had it sent to us by a customer.

Q. Do you make any containers to a standard size or dimension?

A. No, sir.

Q. Is your product a bulky product?

A. We make cartons, we don't like to, but we make cartons that might be four inches square or six inches square, and then we make cartons that might be seven inches long, 20 inches wide, 35 or 40 inches high. So we have a great variety of sizes.

Some of our cartons, three of them would be heavy enough for two men to lift. Some of them, one man could hold fifty. I am not sure I can answer the question.

Q. Is freight a relatively large cost in putting a carton in a customer's warehouse?

[Tr. A-348] A. I am not up on the cost of that. I know freight is a peculiar angle to this extent. We as a small company have to do business in different places with small customers and some large customers. Other competitors

service those, and the customer, no matter how friendly he is to us or no matter how well he appreciates all the engineering and design work we have done for him, in a great majority of the cases he doesn't feel that he should pay us more money than he pays our competitor. So that, if we are selling boxes some distance from our plant, a hundred, two hundred miles away, and he is being sold by a competitor who is in close proximity to him, we have to equalize the freight.

So that freight is included in our cost, but we do not freight-charge each particular item. The only instance in that area would be when a customer might pick up his boxes at our factory, and we would allow him freight on that. We would allow him the carload rate from our town to his town not to exceed a certain amount.

Q. Your cartons are generally priced on a delivered basis, is that correct?

A. Yes.

Q. Sir, with reference to the records which you maintain on customer prices, when you are requested by a competitor to give a price, do you make any notation on your records? [Tr. A-349] A. No, sir.

Q. Do you have any record whatsoever of these calls?

A. No, sir. When the cards are brought to me, I give the information and put the cards in our out basket, and they go back to the files.

[Tr. A-102]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Crown Zellerbach Corporation: Howard T. Milman, Philip S. Ehrlich, Jr., Charles T. Hagan, Jr.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF GORDON M. CLARK

(PX-8)

[Tr. A-103] Q. Mr. Clark, will you state your full name, residence, and business address, please?

A. Gordon M. Clark, 6 Broadmoor Drive, Greenville, South Carolina.

Q. Your employer?

A. Gaylord Container Division, Crown Zellerbach Corporation.

Q. Your position?

A. Resident Manager, Greenville Plant.

[Tr. A-104] Q. Mr. Clark, who has pricing authority at the Greenville plant?

A. I have pricing authority along with my sales manager.

Q. Was this true at the time you were sales manager, also?

A. Yes, sir.

Q. Do you share this authority or is either authorized to make a price decision independent of the other?

A. Either is authorized to make a price decision.

Q. Has this been true throughout the period?

A. Yes, sir.

[Tr. A-105] Q. During the period from November 1, 1958

to October 14, 1963, have you ever found yourself in the presence of representatives of your competitors when prices of corrugated containers were mentioned?

A. Yes, sir.

Q. Would you describe the occasion?

A. At zone meetings of the Fibre Box Association prior to October of 1961 some price matters have been mentioned in my presence.

Q. Were zone meetings the only occasions when this occurred?

A. No, sir.

Q. Will you describe the other occasions please, sir?

A. I attended a meeting sometime in 1959 in Raleigh, North Carolina.

Q. What do you recall about that meeting, sir?

A. I frankly don't recall what transpired at the meeting.

Q. Let me ask you this first, sir. Do you recall ever [Tr. A-106] having been in DiMizio's Restaurant in Salisbury, North Carolina?

A. I remember attending a meeting at a restaurant in Salisbury. I do not recall the name.

Q. On that occasion, sir, did you have lunch at the time?

A. I don't remember.

Q. Do you recall—sir, what do you recall about the restaurants?

A. I don't recall the gist of the meeting other than having met with some other competitors. I do not recall the discussion that transpired or what the purpose of the meeting was.

[Tr. A-109] Q. Do you know the Sir Walter Raleigh Hotel?

A. Yes, sir.

Q. Was the meeting which you attended in Raleigh at the [Tr. A-110] Sir Walter Hotel?

A. Yes.

Q. Were there many people present?

A. As I recall there were a number of people present.

Q. Were the persons present all representatives of corru-

gated container manufacturers?

A. Yes.

Q. Which companies were represented?

A. I recall one person in particular and it is primarily by association that I recall. I had breakfast that morning with Ken Rosenbaum and Mrs. Rosenbaum in the dining room or the restaurant portion of the hotel.

Q. Mr. Rosenbaum is with what company?

[Tr. A-111] A. Owens-Illinois in Salisbury.

Q. Did Mr. Rosenbaum accompany you from breakfast to the meeting?

A. Whether he physically accompanied me or not I don't know. I do remember his having been there at that time.

Q. Was Mr. Rosenbaum present in Salisbury?

A. I don't remember.

Q. And the subject matter of the two meetings?

A. I don't recall the subject matter of the Salisbury meeting, the subject matter as best I can recall at Raleigh was some conversation about set ups that—and that is the [Tr. A-112] gist of what I recall.

Q. When you say set ups—

A. Speaking of set up charges as relates to the various pricing manuals.

Q. Do you recall any occasion when you were in the presence of your competitors and the subject of prices of corrugated containers in the Southeastern United States was mentioned?

A. Yes, sir, it was mentioned at various zone meetings, either prior to or immediately after the formal meeting.

Q. Will you describe these occasions?

A. As I say, I remember various discussions. However, I do not recall discussing anything specifically at any one of these meetings.

Q. Were any of these meetings at or about the time of the

meeting in Salisbury and the meeting in Raleigh?

A. My reference to meeting has to do with the regular zone meetings, sir. As I mentioned previously, prices may have been discussed at any one of these zone meetings, either in a general way—I don't recall any specific discussions.

[Tr. A-114] Q. Sir, correct me if I am wrong. I understood your testimony to be that you do have a recollection that set up charges were discussed at the Raleigh meeting?

A. A discussion of set up charges, yes, sir.

Q. Was this discussion related to the change in set up charges during the summer months of 1959?

A. I cannot answer that.

Q. Sir, I realize this is a real mental exercise. Sir, when we refer to set up charges, is this an element of price?

A. In some instances, yes, sir. However, my price can consist of many variants of set up charges. Many of my prices are arrived at from my costing manual wherein I have variable [Tr. A-115] set up charges.

Q. Is set up charge an element of price of any corrugated container?

A. Yes, sir.

[Tr. A-116] Q. Mr. Clark, have you during the period from November 1, 1958 to October 14, 1963, received requests from representatives of your competitors asking for the prices which you were then charging a specific customer?

A. Yes, sir.

Q. What do you recall about these occasions?

A. This is quite a frequent occurrence insofar as telephone contacts requesting my past market information on a specific account.

Q. Do you give this information when you are requested?

A. Yes, sir.

Q. Where do you obtain the information which you gave?

A. I maintain a card-file which identifies an account and a sales level which we have internally established. I also seek information from my sales order file as well as from

my estimating file and my suspense quotation file.

[Tr. A-117] The Witness: By my file I refer to the general file information and not mine alone. They are to be used by my sales manager, my sales service manager, or my order department personnel.

By Mr. Sliney:

Q. These files to which you have just referred, do these include those which you have just named?

A. Yes, sir.

Q. Was one the suspense order file?

A. A suspense quotation file.

Q. Sir, are these the same files that you have used for this purpose throughout the period from November 1, 1958 to October 14, 1963?

A. Basically, the same type files, yes, sir. By basically the same type, information changes frequently. We are in a competitive market up and down. Files are not constant.

[Tr. A-119] Q. At what point, sir, is the copy of the quotation put in the suspense quotation file?

A. After it has been mailed and/or given the salesman for delivery. I do not discuss quoted information until I am reasonably sure it has had sufficient time to reach the customer.

Q. This is a consideration on your part?

A. Right.

Q. In answering a competitor's request?

A. That is correct.

[Tr. A-120] Q. Do you use all of these files on each occasion that you reply to a competitor's request?

A. If I am in doubt whether a sale has been consummated or whether the quotation has been delivered. If the inquiry is in regard to an account that I know I have sold recently, my card file will give me, in some instances, a level that I can transmit to a competitor.

Q. Sir, I have lapsed again into the present. I wish to reiterate that I have reference to the period from November 1, 1958 to October 14, 1963. Does your answer also have

reference to that period?

A. Yes, sir.

Q. In answering your competitor's request, do you give him the information which actually appears on your records?

A. In most instances. If their inquiry is incomplete, I give them only that which they ask for. There may be information pertinent to the sale that I do not divulge if they don't request.

Q. Have you at any time during this period given false information?

A. Yes, I have.

Q. On what occasion, sir?

A. I don't recall any specific occasion but if they have asked for a past market in an account and I may have varying levels, I have given my highest level.

[Tr. A-121] Q. But on this occasion you gave a level which did exist in that account; is that correct?

A. Yes.

Q. Have you ever given a level which did not exist in a specific account to which you have reference?

A. Not to my knowledge.

Q. On these occasions, sir, where you supply this information, do you make any notation in your records?

A. No, sir, I do not.

Q. Do you have any way of determining to whom or when you have given this information?

A. No, I have not, sir.

Q. During the period from November 1, 1958 to October 14, 1963 have you had any new plants open up in your territory?

A. Yes, sir.

Q. What plants are those, sir?

A. Union Bag-Camp at Spartanburg, Blue Ridge Container at Newton, North Carolina, International Paper at Statesville, North Carolina, Dixie Container at Morganton, Southeast Container at Martinsville, Virginia. That is the extent of my knowledge.

Q. That would be five new plants?

A. As best I can recall off hand, yes, sir.

Q. That would be in the period from November 1, 1958 [Tr. A-122] to October 14, 1963?

A. That is right.

Q. When one of these plants has opened up in your area—do you consider this and what effect it may have on the market which you are serving?

A. Repeat the question, please.

(The question referred to was read by the reporter.)

The Witness: It merely means to me we have that many more people competing for our customers.

By Mr. Sliney:

Q. Has it been your experience as these plants have opened up that prices have been affected?

A. The fact that new plants have opened up has not had direct effect on prices because traditionally our business has been one of extreme competition regardless of the additional facilities or if the existing ones remain in the area.

Q. As these plants have opened up have they had any effect on your practice of giving information regarding the most recent past price to a competitor upon his request?

A. No, sir.

Q. When you furnish this information to a competitor, when you have furnished it during the periods to which we have reference, what benefit did you or your company derive from this service which you had provided?

[Tr. A-123] A. In some ways it has given me an insight as to who is actively competing for this particular piece of business.

Q. Do you find this helpful information?

A. It means I can be on the lookout for a specific company or competitor.

Q. Has it had any other value to you?

A. No, sir.

Q. Sir, during this period have you sought from a competitor the prices which he was then charging a specific customer?

A. Yes, sir.

Q. On these occasions did you consider that you might be tipping off your competitors as to the fact that you were

interested in this customer?

A. Yes, sir.

Q. Did this have any effect on your decision to seek this information?

A. No, sir.

Q. Did you consider the information of sufficient value that you were not concerned whether or not your competitor knew that you were interested?

A. Yes, sir, It gave me an insight as to what the approximate price was in the account.

It gave me an opportunity to meet the conditions or cut the situation if I so chose, depending upon my particular needs [Tr. A-124] within the plant.

Q. Of what value was it to you, sir, to have this approximation?

A. If I was determined to go after a piece of business and knew the market at which it was going, it would enable me to make a move sometimes without having to go as low as I was willing to go. Or it pointed out it was unattractive to me and I desired not to participate.

Q. Sir, you mentioned, I believe, that you have four manuals.

A. I use four pricing manuals in addition to my costing manual to arrive at prices. The manuals which I use have a variety of discounts all over the lot. The manuals specifically are \$12.35, \$13.00, \$14.30, \$15.00, again referring to the multiplier for two hundred pound test board. The other charges for lesser test, of course, are lower in each instance. For higher test a greater charge. But 35 to 40 percent of my business is priced without relationship to any one of those four pricing manuals.

.

Q. What purpose does it serve for you to have these four manuals?

A. In many instances I can use any one of the four and discounts from any one of the four in arriving at a selling price for any specific account. It then establishes internally [Tr. A-125] a level at which that account may be sold or quoted without having to have my authorization or the sales manager's authorization. It permits my sales service de-

partment to act without having to check each and every item for any one account.

Q. Are prices computed internally on each of these four manuals?

A. Not in every instance. Bear in mind 35 to 40 percent of my business is priced without regard to any one of those four manuals.

Q. My question should have been, is each of these four manuals used for purposes of price computation internally?

A. Will you repeat that question, please?

(The question referred to was read by the reporter.)

The Witness: Not in all instances.

By Mr. Sliney:

Q. I do not mean to imply in all instances. I am only inquiring as to whether each of these four manuals find some use in your operations as a means of price computations.

A. At some time or other possibly, yes. However, with discounts from any one of four manuals.

* * * * *

Q. During that period, sir, have you communicated with competitors with reference to a manual?

A. Yes, sir.

[Tr. A-126] Q. Describe for us sir, that type of communication.

A. If a competitor asks for the market or level at which I have sold a specific account I would relate it to one of the manuals and its appropriate discount if it is applicable. If the inquiry was about an account which I have not priced on any one of these manuals but have sold and priced from my costing manual, I would then be obliged to verify the specifications of the item or items which they are seeking and then give an end-sales price information only.

Q. You would give end-price on occasions where the item has been priced from your internal costing manual?

A. That is correct, sir.

Q. And on other occasions, you would give levels; is that correct?

A. That is correct, sir.

Q. With reference to a specific manual?

A. Yes, sir.

Q. The manual would be named at that time, identified?

A. Only named or identified as relates to \$12.35, \$13, \$14.30 or \$15.

Q. On these occasions, sir, is the set-up charge identified?

A. Yes, sir, on some occasions, not every one.

Q. How is that identified?

A. As a \$25 set-up charge or \$15 set-up charge.

[Tr. A-127] Q. On what occasions would you not identify the set-up charge?

A. If it was not related to one of the manuals.

Q. Sir, these calls that you have made to your competitors, have they involved long distance calls?

A. Yes, sir. I do not have any local competition in Greenville by way of manufacture.

Q. As a result, calls that you receive from your competitors would involve long distance calls, also?

A. Yes, sir.

[Tr. A-270]

Monday, March 9, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Union Bag-Camp Paper Corporation: Thornton H. Brooks, Edward R. Kenney, Walter C. Taylor, James C. Withrow, Jr.

Other defense counsel appeared as of record, as stated by Mr. Armistead W. Sapp.

DEPOSITION OF FRANK B. GRIMES

(PX-16)

[Tr. A-272] Q. Are you currently a sales manager with the Union Bag Company?

A. Yes, sir, I am.

Q. With responsibility for what area?

A. The supervision of six salesmen, securing profitable business for my plant and sole responsibility for pricing the business for that plant.

Q. Which plant is that, Mr. Grimes?

A. Spartanburg.

Q. In what area of the United States are sales made from the Spartanburg area plant for corrugated shipping containers?

A. For the State of South Carolina, the western part of North Carolina, eastern Tennessee, three counties in north Georgia.

Q. Has this been true since the Spartanburg plant was established in that area?

A. 1960, January 1?

Q. When was the plant established?

A. We started production January 1, 1960. That was the [Tr. A-273] opening date for the plant.

[Tr. A-274] Q. During the period when you were sales manager at Spartanburg did you have occasion to refer to employees that you call estimators, functions for determining prices on corrugated shipping containers?

A. Did I refer to the estimators, Mr. Bernstein?

Yes, they were part of the sales organization.

Q. Was the practice generally the same so far as their duties were concerned throughout the period, or did that change? Their general duties of furnishing you information as estimators, was that generally the same throughout the period?

A. Yes, there is no change in the procedure on that.

FOR PLAINTIFF:

Q. Will you describe in a general term what their procedure was, what they were obliged to do, what they did?

A. I would receive inquiries from customers, from [Tr. A-275] salesmen, and I would assign a manual level, not one but several. I would assign manual levels to an inquiry at which time I would pass it on to my two estimators, and they would develop a price, using the manual.

They would return that price to me, at which time it was my decision to price the items on that inquiry.

FOR DEFENDANTS:

Q. When you referred the assignment to the estimator, you specified either one or more manuals that they were to use, is that correct, sir?

A. I would specify the manual with discounts, corresponding discounts or increases in a given manual.

Q. What would determine what information you would give the estimator in the first instance?

A. I would receive reports from my salesmen, from my customers; we had many sources of information.

Q. What would be the nature of the kind of information that you would get from a salesman? Can you give us an example of what kind of information? If you received an inquiry from a specific customer, now, with regard to the information you gave the estimator, what information would you receive from a salesman or customer that would enable you to give that information?

A. He would report to me as to whether the price had been cut in the account; whether the price had been raised. [Tr. A-276] He would also report our competition in a given account. This would certainly have a bearing on my decision to price.

Q. In the first instance, would he mention manual to you or use the word manual, or tell you what manual the customer was using?

A. No, he would not.

Q. From the information that you received, you determined what instructions to give the estimator insofar as using the manual is concerned, is that correct?

A. That is correct.

Q. Now, let us take the most recent period, let us say from March 1962 to October 14, 1963. Would you identify the several manuals that your estimators used under those circumstances, and I am talking about from March 2, 1963, thereafter.

Mr. Kenney: 1963 or 1962?

Mr. Bernstein: 1962.

The Witness: We have six manuals that we refer to. The first one is the Union Bag Cost Manual. We then have a \$12.35 manual. We have a \$13.00 manual, a \$13.60 manual, a \$14.30, and what we refer to as a \$15 manual.

By Mr. Bernstein:

Q. Within the company is that the name that you use to refer to them, or do you use other names?

A. Yes, we refer to them in terms of dollar manuals. [Tr. A-277] We also have some of our customers refer to these manuals by \$12.35, our competitors also refer to these manuals as the \$12.35 or the \$13 manual.

Q. Mr. Wulff has testified regarding the instructions to plant managers concerning giving information to competitors. Did you furnish any of the defendants whom you refer to as active competitors in your area, information concerning prices charged specific customers for corrugated shipping containers during the period after the establishment of the Spartanburg, South Carolina, plant?

A. Yes, I did.

Q. Would this be done upon their request?

A. Yes.

Q. What was the source of your information that you

furnished to them?

A. We would record on our estimate cards our last past market price and I would refer to them in answering an inquiry from a competitor.

[Tr. A-278] Q. What is the estimator card you refer to?

A. As a price is developed the form the estimator uses is referred to as the estimating card. As he develops a price it is a worksheet.

Q. And he records the information on it; is that correct?

A. That is correct. Let me qualify that. He does not record all of the information. He develops the price. He then gives it to me and at my discretion I can well change that price, up, down or what have you.

Q. What information do you record on the card?

A. The name of the customer, the level.

Q. I mean you personally, what information do you personally put on that card?

A. After the price is developed and given to me, it is my option to put whatever price I so deem necessary.

Q. And that represents what, the price to be quoted that particular account; is that correct?

A. Yes.

Q. If you adopt the price worked out by the estimators, [Tr. A-279] would you put that price down, would you initial it or what is the practice?

A. Yes, I would initial that.

Q. You would initiate that with the price that had been developed?

A. Yes. That is the price we use. My signature will indicate to the lady who is to type up the quotation that this is the price to quote.

Q. How is that communicated to the customer, as a general rule? After you get through with it what happens to it?

A. It would well be telephoned to him, telegraphed or a formal quotation could be prepared and sent to the customer.

Q. Has it been a general practice that the quotations were sent to the customer from your office in Spartanburg,

South Carolina?

A. I would say for the most part, yes. Occasionally, we will give the quotation to the salesman who, in turn, will deliver it to the customer.

Q. Was there any system used in your plant, Spartanburg, South Carolina, to determine whether the customer had received the quotation before you would give the information to a competitor if he would call for the past quote to that customer?

A. We have one system where in a quotation will have [Tr. A-280] two copies attached to it, Mr. Bernstein. On being submitted to the customer by a salesman, he then indicates the result of that quotation, whether we obtained the order, whether the price was high, whether our price was low or what have you. The other indication would be a report back from the salesman or the customer that our prices again were competitive or not competitive but I think the best indication would be if the order came in in the next day or two.

Q. What do you call those sheets coming back from the salesman, do you call them estimating cards?

A. These are copies of the formal quotation.

Q. Are they filed with the estimator's cards?

A. They are not. They are filed in my office.

Q. In a separate file?

A. Yes.

Q. How about the estimator's cards, are they kept in your office?

A. No, they are not. They are kept in the estimating department.

Q. What is the procedure when a competitor would call you for a "past market" for a particular account?

A. I would ask my secretary to get me the estimate file on a given account and—

Q. What information would you give to the competitor from that estimator's card?

[Tr. A-281] A. Whatever information he was seeking from me.

Q. Would that be the most recent price recorded on that card?

A. That is so.

Q. What can you tell us about the frequency with which

you received requests for information from competitors concerning prices charged specific customers at the Spartanburg, South Carolina plant?

A. The frequency—on a weekly basis I might well receive four or five requests for pricing information, past market information.

Q. When you refer to "past market information," are you referring to the information, in giving information, information that you take from the estimator's cards? Is that correct?

A. Would you restate that, please?

Q. I will rephrase it. When you use the term "past market information" and we are talking about information you give a competitor, are you referring to the information that you take off the estimator's card?

A. That is correct.

Q. And when you—

Have there been occasions when you would request information from competitors?

A. Yes, there have been.

[Tr. A-282] Q. Was there any greater frequency that these requests were made of competitors at the opening of the Spartanburg plant than later on or did it continue generally the same?

A. When we first opened the plant, I had to get the feel of that particular market and I was probably seeking more past market information than I am today. Our plant is running well. At that time, in order to penetrate a lot of accounts we had to cut prices to get the business. The frequency of calls at that time were more than they are today.

Q. How long did that continue, when you say frequency was more than that, how long a period after the opening of the plant did that continue?

A. I would say a year's time until we had ample production in the plant.

FOR DEFENDANTS:

Q. Was this prior to the price increase of July, 1961?

A. Yes, it was.

Q. Do you recall whether or not this price cutting that you referred to before took place after that?

A. Our plant was still not running at capacity until December of the following year. So, the price cutting activity that I was engaged in certainly continued after July and August.

* * * *

[Tr. A-283] Q. Now, would you describe the price cutting activity that you were engaged in?

A. As we approached accounts within a state, within a state, within our given territory, the purchasing agents for the most part were well satisfied with their present suppliers and told us very frankly the only way you can get this business is to offer a concession, specifically price.

Q. Were there occasions when you would call up a competitor before the cut and ask for the price that he was then selling that customer?

A. Yes, sir.

Q. After you received that price, would you then deliberately make a quotation lower than the price that the competitor had been charging?

A. Lower, yes.

Q. What, if anything, did you tell the competitor on those occasions?

A. He would call and ask what we had done and I would tell him, frankly, we wanted this business.

Q. And you would tell him that you had cut the price; is that correct?

A. That is correct.

Q. And you would give him the price to which you had cut it; is that correct?

A. That is correct.

[Tr. A-284] Q. Would you engage in any further discussion concerning the reasons for cutting the price?

A. Philosophize with them about what I had just done.

Q. Had that occurred?

A. No.

Q. Had any bad feeling or threats or any attitude on the part of the competitor been communicated to you on those occasions when you cut the price?

A. I was not the most popular guy in the State of South Carolina for many, many months, but as far as any threats,

there were none.

Q. How about after the plant had reached its capacity?

A. There was still price cutting activity.

Q. Were there occasions when you gave a competitor information concerning a price charged a specific account and you later ascertained that he cut your price?

A. That is correct.

Q. What, if anything, would you do on those occasions?

A. I would find out what his last price was and try to determine if that business was profitable, if we would consider still lowering our price further. There were many factors involved. The plant, at that time, may have been running at capacity, it may not have been. Our product mix may not have been optimum. We wanted to improve the mix. General market conditions. Whether we were working overtime [Tr. A-285] at the plant. These were other factors taken into consideration.

Q. Let us analyze these factors. The first one, you said a factor would be whether a plant was operating at a capacity? Is that correct?

A. That is correct.

Q. What would the consideration be if it were?

A. If it were?

Q. Yes.

A. I would next try to improve the mix in the plant.

Q. What does that mean?

A. The product flow through the plant. We try to sell the most attractive type business for the Spartanburg plant.

Q. How would that influence your decision as to whether you would meet or beat a price cut by a competitor? In other words, if your plant was at capacity and if the mix was satisfactory, what consideration would you give that when you learned that a competitor had cut your price with a particular account? I am trying to find out how you applied the principle, what application did you make?

A. What I would, in turn, do?

Q. How would it affect your decision concerning the price? I don't want to put words in your mouth, but as an example, if the plant were at capacity and your price was cut, you weren't concerned about your production, might you not [Tr. A-286] meet that price?

A. Meet it or perhaps cut it a little more.

Q. Even though your own plant was at capacity; is that correct?

A. Here, you are telling me—excuse me—we cut a price, a competitor, in turn, came back and cut our price, what would I, then, do?

Mr. Kenney: May I suggest, Mr. Bernstein, that you ask him the question again? I think he has lost track of it.

Mr. Bernstein: All right, I will rephrase it.

By Mr. Bernstein:

Q. I am trying to ascertain how in practice the factor of the operation of your plant at capacity influenced the price that you would quote a particular customer.

A. If our plant was running at optimum capacity, our mix was good, I would certainly not, I would not be as prone to cut a price.

Q. What significance would the overtime factor have?

A. Well, if we found that we had a preponderance of one type business, we refer to it as specialty business, requiring a lot of overtime, I might well price myself out, price high on specialty type business and eliminate the overtime in the plant.

Q. So that, is it fair to say that depending upon the [Tr. A-287] particular account and particular plant situation at a particular time, you would then make your determination as to whether you were going to meet the price, quote higher, or quote lower, is that a fair summary?

A. That is fair.

Q. Now were there occasions when you found out that a competitor had cut your current price to a specific account and subsequently he would ask for information concerning another account, and what effect, if any, did the fact that he had cut a previous account have on your decision to give information concerning some other account?

A. I wouldn't hesitate to give him the information.

Q. Weren't you concerned that he might cut the price to that account?

A. Yes, at least I would know where the source was. If he is calling me for guidance for past market, I know he is a factor, he, too, is quoting in the account, and this information is good, better than not having any at all.

And by the same token, I would have to call him for a past market at some later date.

Q. Why would that information be of help to you? The past market price that you would get from him?

A. Why would it be of help to me? It would help me in my decision as to how to price the account. If my competitor is historically selling at low market prices, it [Tr. A-288] helps me in deciding as to what manual to use. If he sells at a low level, I would use the, say, \$12.35 manual.

If historically he prices high, I might even try to get the business at a higher manual.

Q. But nonetheless lower than his price, is that correct?

A. Not necessarily, not necessarily.

Q. Would it be of any help to you on occasions to—let us see if we can put this in concrete terms, Mr. Grimes. I am referring now to the period when your Spartanburg plant first got into production and you were anxious to develop markets, is that correct?

A. That is correct.

Q. And you had determined that one of the ways you were going to get business was by cutting existing prices, is that correct, sir?

A. That is correct.

Q. Would it make any difference to you in the amount of the price that you would cut if you would find out what manual or what level a competitor was then charging a specific customer?

A. Yes, it would help.

Q. In what way?

A. I would know, number one, if it is profitable business. This would give me a feel of the market. This [Tr. A-289] information, coupled with other information I was getting, would help me in decisions on pricing.

Q. Were there occasions when you might find out that the competitor was using the \$14.30 manual, so that you could make a decision to cut the price from the \$14.30 manual, whereas, if he were using the \$13.60 manual, your decision would have to be to cut the price from the \$13.60 manual? Did that happen?

Mr. Kenney: Will you read the question?

(The question was read by the reporter.)

Mr. Kenney: Do you understand the question?

The Witness: Yes, I do.

As I mentioned earlier, Mr. Bernstein, the customers we were soliciting business from were for the most part satisfied with their current suppliers. They had to have an incentive to change, and for the most part that incentive would be a price reduction. So it was very unlikely that if we quoted the same manual that we would secure the business.

By Mr. Bernstein:

Q. Was it of any interest to you whether they were using the \$14.30 manual or the \$13 manual in determining what price to quote?

A. Very much so.

Q. How is that?

A. If I could obtain business, if my competitor was [Tr. A-290] quoting \$14.30 and I could secure business at \$13.60, that would be certainly to our advantage. I would not have to resort to the \$13.60 or the \$13 or the \$12.35 level. This would be more profitable business for us.

Q. What was your purpose in giving the information upon request to a competitor concerning a specific account?

A. Will you re-state that question?

Q. What was your purpose, what did you hope to accomplish, what did you intend to achieve for your company in giving a competitor information concerning the past market to a specific account?

A. I had to give him that information. If I didn't give it to him, he in turn would not seek information from me. Mr. Bernstein, you must understand, as we started our Spartanburg plant up, we had to penetrate accounts to get business for running, and this happens, we have had it happen in the last year, in the last year and a half, with other competitors moving into this area. This is the route you have to go in order to fill your plant up.

Q. Now referring to the period since the Spartanburg, South Carolina plant has been in operation and up through July 1, 1963, and I am using the date July 1, 1963 because of Mr. Wulff's explanation there was no communication with competitors during the period July 1, 1963 through October 1, 1963—up through July 1, 1963, can you identify

the [Tr. A-291] individuals in behalf of Container Corporation of America to whom you gave information concerning a specific customer or received information concerning a specific customer?

A. A Mr. Clay at Container Corporation.

.

Q. Please identify it or I will say it this way, please state whether or not during the period 1960 when the Spartanburg plant opened through July 1, 1963, you gave any information upon request to a representative of Albemarle Paper Manufacturing Company?

A. I cannot recall the party to whom I may have given that information.

Q. Can you recall you did but you cannot identify that individual?

A. That is correct.

Q. But you do recall you did give that information?

A. Yes and Dozier I believe is the party I communicated [Tr. A-292] with.

Q. And did you also receive information from Mr. Dozier of Albemarle Paper Manufacturing Company?

A. I believe I did, yes.

Q. And the same question with regard to Carolina Container Company?

A. Mr. Carter Holbrook.

Q. And the same question with regard to Continental Can Company?

A. Mr. Roy Taylor and Mr. Johnson and Mr. Beams.

Q. And the same question in regard to Crown Zellerbach Corporation?

A. Mr. Gordon Clark.

Q. And the same question with regard to Dixie Container Corporation?

A. I don't recall calling Dixie in Richmond. I have had communications with Dixie at, Dixie of North Carolina, with Mr. Joe Schwind.

Q. And did you give or receive information concerning the price charged a specific account with anyone from Inland Container Corporation during the same period?

A. Mr. Barney Roberts.

Q. And the same question with regard to International Paper Company?

A. Mr. Spike Ennis.

[Tr. A-293] Q. And the Mead Corporation?

A. Mr. Dave Bloom.

Q. And Miller Container Corporation?

A. I can't recall communicating with Miller Container.

Q. Is it your current recollection that you did not communicate with them at all?

A. It is my best recollection, I don't recall ever calling those people.

Q. And do you recall ever giving or receiving information concerning the prices charged a specific account during this period to Owens-Illinois Glass Company?

A. Mr. Ken Rosenbaum.

Q. Anyone else?

A. Mr. Brittain.

Q. How about the St. Joe Paper Company, the same question?

A. I recall vaguely calling St. Joe Paper Company. This is several years ago but the man's name escapes me.

Q. Do you recall whether you received the information on the occasion that you called?

A. I don't believe so. I don't believe I did.

Q. Do you recall whether St. Joe Paper Company ever made any requests to you for price information?

A. I don't believe they did, no.

Q. Do you recall whether St. Regis Paper Company made [Tr. A-294] any requests of you for price information concerning specific accounts?

A. Mr. Petrie and Mr. Diggs.

Q. Do you recall whether you requested any information of St. Regis Paper Company?

A. That was St. Regis Paper?

Q. You requested and gave information, is that right?

A. That is right.

Q. And did you request any information of Tri-State Container Corporation?

A. Yes, I did.

Q. From whom?

A. Mr. McDonald.

Q. Is that Alan McDonald?

A. Alan McDonald.

Q. Did you give any information upon his request?

A. Yes, I did.

Q. And anyone else of that company?

A. I don't recall any other parties, no.

Q. Do you recall making any requests of West Virginia Pulp and Paper Company during this period for that kind of information?

A. Mr. Alan Holt.

Q. Do you recall any requests made of you for customer information from Mr. Holt?

[Tr. A-295] A. Yes, I do.

Q. Anyone else in West Virginia?

A. No, sir.

Q. Do you recall whether or not you gave any information upon request to Weyerhaeuser Company?

A. Yes, Mr. George Elliott.

Q. Anyone else?

A. Mr. Alan Clayton. Those are the only two I can recall.

Q. Do you recall whether anyone in behalf of Weyerhaeuser Company requested information from you concerning quotations to specific accounts?

A. Yes, both of those gentlemen did.

Mr. Bernstein: Let us approach it this way. I will be through with the witness in two minutes. In response to my question before concerning the benefit to your company of giving information to a competitor concerning a price charged a specific customer even when he cut your price, what was your answer to that, please?

The Witness: The benefit derived by my company—

Mr. Kenney: Can't we find out his answer by having that repeated?

The Witness: May I have that repeated, please.

(The answer referred to was read as follows:)

[Tr. A-296] "A. I had to give him that information. If I didn't give it to him, he in turn would not seek information from me. Mr. Bernstein, you must understand, as we started our Spartanburg plant up, we had

to penetrate accounts to get business for running, and this happens, we have it happen in the last year, in the last year and a half, with other competitors moving into this area. This is the route you have to go in order to fill your plant up."

By Mr. Bernstein:

Q. Is that what you meant?

A. He would not give it to me, in other words.

Mr. Bernstein, that information is very pertinent to me in making decisions on pricing. This is my decision to make alone and without this information I don't know what the market is.

* * * * *

A. My company policy, and this has been in effect for as long as I can remember, was not to attend meetings other than Fibre Box meetings, with my competitors. This was re-emphasized when I was assigned to the Spartanburg plant.

Q. How long had this policy been in effect that you were aware of?

A. As assistant sales manager, I believe the policy was [Tr. A-297] in effect then and in 1959 when I was told I was going to Spartanburg it was again re-emphasized.

* * * * *

[Tr. A-298] Q. What is your current impression as to what you did with regard to quoting the same price or higher to a specific [Tr. A-299] customer during 1962 and 1963 after you had asked the competitor for his past market to that account?

A. I would certainly continue as I did in 1961 or 1962. I had not changed my method of operating. If we wanted a piece of business that was attractive to us, we would certainly cut the price to get that business.

Q. What I am trying to ascertain is, were there more occasions in 1962 and 1963 that you found it necessary to cut the price in order to get the business than it was in 1961 or was it just the opposite?

A. I would say I would be less apt to cut in 1962 and 1963 than I would have been in 1961 or 1960.

Q. But nonetheless, you did cut as the occasion required; is that correct, sir?

A. That is correct.

Q. Did you evaluate each transaction at a given time depending upon the factors that were then involved in making your decision whether to cut, quote the same price, or go higher?

A. This was my decision to make, considering all factors.

[Tr. A-737]

Monday, March 9, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Union Bag-Camp Paper Company: Edward R. Kenney, James C. Withrow, Jr., Thornton Brooks, Walter Taylor.

Other defense counsel appeared as of record, as stated by Mr. Armistead Sapp.

DEPOSITION OF LEWIS WULFF

(PX-37)

[Tr. A-738] Q. Mr. Wulff, will you please state your full name, residence address and business address?

A. Lewis A. Wulff, 6245 Rivershore Parkway, North West, Atlanta, Georgia. Business address, 500 Pine Tree Street, Forest Park, Georgia.

Q. How long have you been engaged in the corrugated shipping container industry?

A. Since October 4, 1948.

Q. With what company have you been associated, or companies, have you been associated during that period of time?

A. Union Bag-Camp Paper Corporation the entire time.

* * * * *

[Tr. A-742] Q. I invite your attention to paragraph 3 of that notation, "We will make decisions on customer guidance only after exhausting all effort to determine level." Will you please explain what that meant?

A. It meant that we were anticipating that it was going to be necessary to raise prices. The time we didn't know. This was going to be a decision that would be made at headquarters. It would be a decision that came out of our general sales office in New York. We felt that when the announcement came out that we were going to take a final stand. If we announced publicly that we were increasing prices it was, and always has been our intention and practice that we attempted to be quite rigid in this business of raising it, and

certainly customers' attempts to do their jobs, purchasing agents want to do their jobs as best they can and it is their job to buy as economically as possible.

Too frequently, salesmen in particular are prone to accept customer guidance and we stated here that we would accept customer guidance only after attempting to find out [Tr. A-743] what the actual level is in an account and we very frequently called up our competitors to find out what their past market had been.

Q. Now in the case of this—strike that.

Is it not correct, sir, that on or about June 1961 you were giving consideration to a prospective price increase?

A. Mr. Bernstein, price levels had gone down rather consistently for a six months period and we knew that if we were going to stay in business we were going to have to raise our prices. If we were going to make any money in containers.

Q. Now did this policy on making decisions in customer guidance only after exhausting all efforts to determine the level, did you contemplate that that be implemented, that when prices should be increased, if they were, that if a purchasing agent would advise a salesman that he was not paying as much as the increase the Union Bag sought to impose, that before accepting that customer's word for it something be done about it; is that right?

A. I don't know what you mean by "something be done about it."

Q. To ascertain all effort made to determine a level. Is that what you meant, sir?

A. That is right.

Q. Something be done to determine a level?

A. That is right.

[Tr. A-744] Q. How did you contemplate that that be done, to determine a level?

A. This has been typical in our company. When we have announced that we are raising prices, very frequently it will be thirty days that we might even lose business in a given account. In essence that is what we are telling ourselves and our sales managers, we want to be sure that we find out that competition has not raised their price before we decide to revert to our former levels or we decided the business is not worth having.

Q. Did that also contemplate ascertaining that from competitors also servicing their customers?

A. Correct.

Q. Now I show you document numbered W21201 in the upper half and identified as UNI03352, in the lower right corner and ask you to please glance at that document and see if you can identify who prepared it and the circumstances under which it was prepared?

Do you recall who prepared that document?

A. This is Fred Kneip's handwriting.

Q. Do you recall discussing this subject with Mr. Kneip?

A. We discussed it many times, not only with Mr. Kneip but the legal department in New York, our own legal counsel, and the top management in the company.

[Tr. A-745] Q. Under Item 1, the first alternative method listed you list as a flat percentage increase across the board. Will you explain that in a little more detail, please?

A. Yes, sir. This approach, and these were possible approaches that we had discussed, this particular approach would be one where no matter what any customer was paying for boxes at the time we were announcing, we would possibly announce a flat increase, percentage-wise, whether it be five, ten, and it would apply to all accounts.

Q. Now did you personally consider that one of the arguments in favor of this was that there it reduced the need for communications? Was that your view?

A. You are asking me if I concurred in this opinion?

Q. Yes.

A. Yes, sir.

Q. Would you explain how this flat percentage increase would reduce the need for communication?

A. If we announced a flat percentage increase there would be no need for any of our competitors, in case they had an idea that they were going to follow a published announcement by Union Camp, there would be no need for them to talk to us about anything. We would not have raised our prices two percent with one account, five with another and six with another. We would say a flat percentage increase should suffice. The announcement of a flat increase.

[Tr. A-746] Q. I notice under a consideration against that alternative method was that this "would probably be a major change in the accounts handled by each customer ..."

Would you explain that?

A. I think he didn't write this very clearly: I don't really know what he means. It would probably be a major change in the accounts handled by each customer: I don't understand the word customer.

Q. If the word customer were competitor would that—

A. No, I think he means—

Q. I am not trying to ascertain what he means. I am trying to get your view of the situation at the time. So, perhaps let us approach it this way. Did you agree or do you know now whether there would be a major change in the handling of each account? Notice his reasons,—because (a)—what is his first reason? Deviation—lack of support?

A. Right. Would you restate the question?

Q. I will ask you another question now. Did you give any consideration at that time that this alternative method, of the flat percentage increase, would be disadvantageous because with regard to individual accounts there might be a major change in handling that account and there might be deviations and lack of support for this increase?

A. When we studied the approaches to a price increase we did not know, number 1, how we were going to approach it. [Tr. A-747] Secondly, we did not know how competition would react, and Mr. Kneip had written down under the "consequences" the possibility of lack of support in the industry.

Q. Lack of support by whom, Mr. Wulff; by competitors?

A. By competitors.

Q. You mean competitors might not take the same view?

A. They might not follow the original announcement. They might or might not also increase prices if we announced. He is referring to the flat percentage now under "consequence" and he felt, I am sure, and I did, that all competitors may not feel that certain accounts should be raised, and this would mean that if we had gone ahead and announced a flat percentage increase across the board that it might or might not be supported.

Q. Now, please observe the next reason that he gives as a condition, (B) it "tends to increase the importance of differentials now existing within accounts." Will you tell me now what that has reference to?

A. If we raise an account that through competitive pressures had been lowered in price over the years, or over the

months, and we increased said account 10 per cent, and we increased another account whose prices had not been so terribly depressed, we would be increasing the differential by adding 10 per cent to each one of them.

Q. Were there some accounts that were giving you a [Tr. A-748] return that you felt did not justify an increase at that time?

A. I can't say categorically. I would say probably.

Q. So that were you concerned, Mr. Wulff, that if you had an account that you had decided or that you might decide not to increase, and you used the across-the-board method, you might be concerned that some competitor might not increase—

Mr. Kenney: I object to that form of the question. I want to move along, too, but, I suggest that you re-phrase that question.

By Mr. Bernstein:

Q. We will note the objection.

Let me read it. Will you read the question?

(The question was read by the reporter.)

By Mr. Bernstein:

Q. —the price to that competitor?

Mr. Kenney: Objection. I don't understand the question. I don't know whether the witness does or not.

By Mr. Bernstein:

Q. Do you understand the question, Mr. Wulff?

A. I think I do.

With several hundred competitors, if a major company announces a price increase and it appears in the Wall Street Journal and the New York Times and the Chicago Herald Tribune and the Atlanta Constitution, competitors are going to assume [Tr. A-749] that prices by Union Bag-Camp have been raised or we would not have made the announcement.

If we say $7\frac{1}{2}$ per cent across the board, and they were to discover that in some accounts we had not raised, in other accounts we had raised 3 per cent and not $7\frac{1}{2}$, I can't anticipate all of the reactions that would occur. Some competi-

tors would probably say, "Well, they have not raised $7\frac{1}{2}$, they have raised 3, because in two accounts that I share I know they raised 3." Therefore, we would water down the effect of our announcement.

Q. And you considered this a disadvantage to using an alternative method of announcing by an overall increase, is that correct?

A. Correct.

Q. Note on the Alternative Method of using a price list of formula, you have in favor of that "Simplify Communications." Again, what was meant by that?

Mr. Kenney: If you know.

The Witness: Bear in mind these were all possibilities of approach. No decision had been made. We were kicking around all the methods by which possibly we could get this job done. When we speak of price list or formula, I think we are speaking of price list of commodity items such as I mentioned, the Sanitary Can Box price list; a formula would be an approach similar to the manual that was in [Tr. A-750] existence in the Southeast. You are asking me about the "Pro" now.

By Mr. Bernstein:

Q. And I am limiting my question to your own consideration. Did you subscribe to the view that one of the elements in favor or one of the considerations in favor of using the Alternative Method of issuing a price list or formula would be that it would simplify communications? Did you believe that?

A. I can't recall that I did or did not believe it.

Q. If you were making that consideration today, would that simplify communications?

Mr. Kenney: I object to the form of the question.

The Witness: I am not sure.

By Mr. Bernstein:

Q. Do you know what communications were referred to in this document?

A. The checking of past markets with competition, I am sure of that.

[Tr. A-751] Q. Do you know what ultimately happened to that 1961 increase?

A. Yes, sir.

Q. Was it implemented?

A. Oh, yes.

Q. How?

A. The Wall Street Journal carried an announcement—as I stated earlier I can't remember the date, I think it was September 1 or October 1—the announcement came out, I think, by one or two major competitors. We were in session each day to determine whether or not we ought to do it in the [Tr. A-752] same manner or how we should do it and I think there were probably two or three announcements before we issued one, also.

Q. Do you know now whether or not there was an Inland Manual published at that time to the Trade announcing the increase?

A. Mr. Bernstein, the announcement that I knew about came out of the Wall Street Journal and in other newspapers. We immediately set about announcing by letter to each of our customers a statement that our prices were going up effective whatever month it was, the first of October or the first of September. I am calling on my memory and I believe that sometime after that Inland Container came out with a new manual.

Q. Do you recall giving any consideration at or about this time to the increasing of the level high enough to allow independents to make a reasonable return?

A. That is listed here as one of the "Cons."

Q. Well, did you give that consideration?

A. We have always felt that if a price increase was going to be effective it had to be one in which independents were interested because in certain areas of our sales activity, independents are a rather decisive influence in the market. Please bear in mind that when we talk about raising prices we want to consider all of the influences that might [Tr. A-753] help or deny us success in the effort. I might add these cannot always be anticipated.

[Tr. A-754] Q. Mr. Wulff, do you recall whether or not in implementing the price increase, specific instructions were issued to plant managers concerning telephone conversations with competitors?

A. Are you referring to the 1961 increase, sir?

Q. Yes.

A. They were.

[Tr. A-755] Q. Now, would you please search your memory, and without referring to the document except to the extent that you have to, to refresh your own memory, I am trying to ascertain your current recollection of the situation, and explain to us if you recall what those instructions were?

A. With regard to communications?

Q. That is correct.

A. We instructed our sales managers in rather precise language as to how they could inquire of a competitor his past market. We instructed our sales managers on how they should reply to a competitor's inquiry of us as to what our past market was at the time. And we were quite specific, as shown on the exhibit.

Q. Can you identify the exhibit?

A. Page 3.

Q. No. I mean do you know what this exhibit is? Who prepared it, and what the circumstances were under which it was issued and so on? What does it look like to you?

A. These were ground rules that we established, and page 3 was discussed with counsel in our company and, as I recall, had their approval as the correct manner in which to avoid indiscretion, suspicion of wrong-doing, and we adopted page 3 as our communications system.

Q. Do you recall who prepared this document, pricing policy in these instructions?

[Tr. A-756] A. I prepared page 3.

Q. How about pages 1 and 2?

A. I think that was Mr. Kneip's authorship.

Q. Do you recall whether these were the instructions that were attached to the document and dispatched to your plants?

A. They were.

Q. Prior to July 28—strike.

For the record, did that include all of your plants that were responsible for selling corrugated containers in South-

eastern United States?

A. Yes, sir.

Q. Prior to July 28, 1961, and I am referring to the date that appears on the document, had you issued any instructions to your plant managers with regard to communications with competitors in Southeastern United States?

A. Mr. Bernstein, in 1956, a grand jury investigated the corrugated box industry in New York City. When that occurred, Mr. John Harrison, who was then Vice President in Charge of Sales for our division, made it a specific point to discuss with all of his sales managers the fact that our company had always been following, the policy had always been to follow proper, prudent discussion or exchange of information on prices, and by all means he wanted to be sure that the sales managers understood the correct way in which to handle. [Tr. A-757] this, and it was emphasized at that time.

Q. What guidelines had you given? Do you recall?

A. The guidelines given were pretty similar to page 3 actually. They had not been put in writing prior to this time, but it was actually his counsel and advice to all of us from which I was able to write this set of examples.

Number one, talk only about past markets. Number two, give a competitor what he asks for, hoping that if you ask him something he will give you what you need to know. In essence, that was it, no discussions, no philosophizing.

Q. When you say give the competitor—

Mr. Bernstein: Will you read back the last answer?

(The answer was read by the reporter.)

By Mr. Bernstein:

Q. With reference to your answer that you instructed your plant managers in general to give a competitor what he asks for, hoping that whenever you ask him for something he will give you what you wanted to know, what would be the type of information that you would want to know when you might make a request of a competitor?

A. I probably left myself a little too vague.

All we ever wanted to know from a competitor is what his past market is. All we ever gave a competitor was our

past market.

Q. When you say past market, do you know precisely [Tr. A-758] how that was implemented? Do you know, yourself? Do you know the records from which the information was ascertained and the source of the information?

I will withdraw the question and ask you this one:

Mr. Wulff, have you ever personally given competitors information as relating to Southeastern United States?

A. Yes, sir.

Q. What were the kinds of information that you gave?

A. The prices at which we had sold or quoted a customer.

Q. When you gave them that information, in what capacity were you then serving, as assistant to the sales manager, or some other capacity?

A. I have done that as assistant to the sales manager, and I have done it as regional sales manager in the Southeast.

Q. On the occasions when you did it as assistant to the sales manager, where did you get the information from to give the competitor?

A. From the plant.

Q. So, that necessitated another phone call, is that correct?

A. That is correct.

Q. You did not have the information readily available?

A. No, sir.

Q. Now, was it your practice and policy to give the [Tr. A-759] competitor the most recent price sold or quoted to a specific customer?

A. Oh, yes.

Q. When you referred to past market, you said a price quoted.

A. Yes.

Q. Did that refer to the most recent price quoted?

A. Yes.

Q. Did you make any distinction of withholding information from a competitor if a customer were currently buying a specific box from you, would you give the competitor the price that that specific customer was then being invoiced for the box, or would you withhold that information?

A. I wouldn't withhold any information. If it was the past market he asked for, he got it. He asked for it, [Tr. A-760] and he received it.

Q. Have you ever had occasion to withhold information requested by a competitor?

A. I don't recall any specifics where that occurred.

Q. Prior to October 14, 1963, and prior to July 1, 1963, when you became Southeast Regional Manager, did your plant managers in Southeastern United States have authority to give this information concerning past market for a specific account to a competitor?

A. Will you give me the date again?

Q. Prior to July 1, 1963, and after 1959.

A. From 1959 to July 1, 1963?

Q. Yes.

A. Did our sales managers have authority to give past markets to a competitor? Yes, sir. I mean plant managers. They did have.

Q. During that same period of time you also had occasion to give the information, is that correct?

A. That is correct.

Q. Now, what were the circumstances that the request would come to you and not to the plant manager?

A. There were a few competitors who had obviously limited the level of management responsibility to trading past market information. There were occasions when I would be asked in New York City by a competitor in New York City [Tr. A-761] to get past market information.

Q. Concerning Southeastern United States?

A. Yes.

Q. Can you identify those competitors?

A. It seems to me for a period, and the dates are too hazy for me to identify, there was a time when I believe Container limited conversations with competitors with people at higher level. I believe International Paper did. I believe they limited the level of responsibility for communicating purposes. To my knowledge they are not now in communication at all.

Q. Is that the present tense that you are using that?

A. Yes.

Q. Was there a time when they were "in communication"?

A. Yes, sir.

Q. Do you recall whether that was during some period of time while you served as assistant to the General Sales Manager of the Container Division during the period from the end of 1959 thereafter, sometime thereafter?

A. Yes, sir.

Q. Now was there any other—now is this a fair characterization that some companies insisted on “trading” information with you at your level of responsibility?

A. I can't tell you that. I know that answer.

Q. Can you identify any other companies that are listed [Tr. A-762] in this complaint with whom you “traded” information during the period when you were assistant to the general sales manager?

A. On matters pertaining to the Southeast, is that right?

Q. Yes, sir.

A. Mr. Bernstein, do you consider Southeast purchases that are made in New York City?

Q. Yes, for shipments to plants located within the states that are identified on the second page of the complaint.

A. Even though the purchasing is removed from the Southeast?

Q. That is right.

A. I am sure that I talked with “IP”.

Q. That is International Paper?

A. Yes, sir.

That is about all I recollect.

Q. Can you identify the individuals with whom you “traded”?

A. I talked to Chuck McMahon.

Q. Of International Paper?

A. Yes.

Q. And of Container Corporation?

A. I am trying to recall, I have to recall the problem before I can recall that I talked to anybody specifically. [Tr. A-763] I talked with Duane Arbuthnot.

Q. And what was the answer?

A. To be honest with you, I am not sure about that, in fact I know I don't recall exactly. I know that another sup-

plier entered the account, entered into a supplier relationship with the account. I don't recall if Continental Can did or not.

Q. At the time that you made the inquiry of Mr. Arbuthnot, did you know who was supplying the account?

A. Our sales manager in Jamestown was quite close to the situation. He received information from the plant level that a new supplier had entered it, had entered the account, so I knew that.

Q. Did he also advise you that Continental remained in the account?

A. I think he didn't even know at the time.

Q. Who was the new supplier?

A. Fitzhugh Container of New York.

Q. If you will please refer to the complaint to assist you in identifying the particular defendants in this case and state whether there are any other individuals that you [Tr. A-764] gave price information concerning specific accounts to during the period from the end of 1959 until October 14, 1963 that you have not already identified?

A. Howard Simmons, Weyerhaeuser Company, who was then located in Chicago.

Q. Do you have a question, Mr. Wulff?

A. From October 10 to October 14th is a problem that I have to explain to you. I took over my responsibilities in the Southeast the first of July. I did have very little communicating, if any, with people in the Southeast between July 1 and July 15th or 16th. I am speaking of 1963. Our entire container organization was off the phone from approximately July 16th until approximately October 10th. Therefore, if you want to use these dates I have to mainly refer to October 10th to 14th.

Q. During the period from July 10th to October 1st, do I understand you to say that it was—when you say “off the phone”, what do you mean?

A. We were not communicating with competitors.

Q. At all?

A. At all.

Q. And so excluding that period was there any communi-

cation?

A. Sir, you asked up to October 14th and I only have four days left and that may have been a weekend. I don't [Tr. A-765] know.

I am not being evasive in answering the question.

Q. I understand. To clarify your answer I will say then up until—when was the date that you were out of communication?

A. About July 16th to—

Q. Let us say then from the period 1959 to July 16, 1963.

A. I had very little occasion to talk to any competitors other than the ones I have already mentioned. During the period from 1959 through July of 1963 on matters pertaining to the Southeast.

Q. Now from October 10, 1963 on to date, does your company maintain a policy of giving information to competitors concerning specific accounts in Southeastern United States upon request?

A. Yes, sir.

[Tr. A-766] A. We have currently, in most of our plants, we have attempted to develop this for all plants, what we call a cost-profit manual. We use that along with other manuals in determining prices. We don't seriously worry about the profitability if it is in a proper, reasonable range. We do worry about profitability when the market goes down to a given point, some given point, and we have frequently used cost manuals to determine whether or not we can afford a piece of business.

Q. Did the cost manuals that you use in general follow [Tr. A-767] the same system of estimating the price that is used in the Inland Estimating Manual or is it different?

A. The cost manual is totally different.

Q. Different system?

A. Totally different.

Q. Now you say that the non Union Bag manual is the manual used for estimating in price communication and how does it assist in communication?

A. We have upwards of a thousand customers in the Southeast. Probably the difference in price levels would go into infinity among these upwards of a thousand customers. If we want to determine a past market in a given account we may have an inquiry with fifty items. It is a very simple matter to get a feeling from competition of what the market is in the account by merely referring to a level or X number of percent off a level and it is more complicated than you can imagine. In addition the communication, itself, is complicated enough without attempting to get end prices on 50 or 60 items. We just don't have that much time.

Q. So, when, for ease of communication, you identify the board levels and you identify the manuals, is there anything else you have to identify for you to understand?

A. There is no standard set up and very frequently you will ask the competitor from whom you are attempting to get [Tr. A-768] information, what set up do you use? There are many times when there are differences in the way people apply the manual charges as they are set up in the book. I personally do not feel that if I get a manual level from a competitor that our sales managers are going to necessarily come up with an exact price. It is possible but it is not always true.

[Tr. A-769] Q. Mr. Wulff, you were asked a number of questions by [Tr. A-770] Mr. Bernstein concerning the Union Bag-Camp pricing increase in 1961. Was this price increase discussed with competitors before it was put into effect?

A. Not to my knowledge.

Q. One other thing. I would like you to state for the record why Union Bag-Camp went off the telephone between July 16, 1963 and November—to October 10, 1963?

The Witness: About July 16th or 17th, 1963; Mr. Kneip called our sales managers and regional sales managers into

New York City and announced to them that we were putting in the Wall Street Journal an announcement that [Tr. A-771] prices were going up effective August 1, 1963. He had a communication that was being mailed to our customers on that or the following day. He distributed these announcements. He said, "Gentlemen, in view of the fact that our industry is somewhat under the gun apparently with regard to how we conduct ourselves in handling our prices we want to keep ourselves beyond areas of suspicion in the way we are handling this in order to minimize exposure to possible indiscretions we are going to stand on the announcement and on announcement in the leading papers of the country. For this reason you fellows will be off the phone and out of communication with competitors starting today and until further notice.

[Tr. A-773] Mr. Bernstein: May we begin, Gentlemen, please?

I have been advised that Mr. Wulff desires to clarify a statement made yesterday. Mr. Kenney, will you proceed, please?

Mr. Kenney: Yes, Mr. Bernstein. And I would like to say for the record I appreciate the opportunity to clear this matter up.

Further deposition of Lewis A. Wulff, a witness in the above entitled action, recalled for examination by counsel for the Plaintiff, pursuant to stipulation of the parties, in the Grand Ballroom of the King Cotton Hotel, Greensboro, North Carolina, beginning at 9:00 o'clock a.m.

Whereupon, LEWIS A. WULFF was recalled for examination and having been previously sworn, was examined and testified further as follows:

Cross-examination. (Further)

By Mr. Kenney:

Q. You are Mr. Wulff?

A. Yes, sir.

Q. You are the same Mr. Wulff who testified in these proceedings yesterday?

A. Yes.

Q. You understand you are still under oath?

[Tr. A-774] A. Right.

Now you testified at some length about that document and after having reviewed your testimony have you concluded that it was erroneous with respect to this particular document?

A. I have.

Q. Now would you like to make a statement covering the error?

A. I would like to.

As you stated, Mr. Kenney, we covered the fact that there was a need for a price increase. What did Union Bag-Camp do about it? And I said that we announced a price increase after which I received the document for reference. The document referred to on page 12 of the transcript actually did not have anything to do with the price increase. It had to do with a problem that we faced when liner board was reduced and it precedes by probably thirty days subsequent documents that were handed to me having to do with an increase.

In item number 3 of the document we stated "We will make decisions on customer guidance only after exhausting all efforts to determine the level." We realized that at the time a board price reduction was published certainly many of our customers would be expecting us to reduce prices. [Tr. A-775] They would be expecting box prices to go down. We, as I stated earlier, felt that the board price reductions had already been discounted. We did not plan on taking customer guidance without attempting, if at all possible, to determine from competition if in fact a given competitor in a given account had reduced his prices.

On item number 4 of the document where we stated "We are prepared to sacrifice volume in the interest of maintaining our price stability", the price had eroded to the extent that there were a good many accounts that would have been totally unattractive to us if we had had to reduce further.

[Tr. A-35]

Thursday, March 5, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant Albemarle Paper Manufacturing Company: Robert P. Buford, Jr., John J. Adams, Charles F. Blanchard.

Other counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF ANTHONY J. BAGLEY

(PX-5)

[Tr. A-36] Q. Mr. Bagley, will you state for the record your full name and address?

A. Anthony J. Bagley, R.F.D. 1, Midlothian, Virginia.

Q. Are you presently employed in the corrugated container industry?

A. No, sir.

Q. When were you last employed in the corrugated industry?

A. October, 1963.

Q. By whom were you employed at that time?

A. Richmond Container, Division of Albemarle Paper Company.

Q. What was your position, sir?

A. At that time, I was Division Manager of that particular plant.

Q. How long had you had that position, sir?

A. Since September 9, I believe, 1959.

Q. During all of that time, was this plant a division of the Albemarle Paper Manufacturing Company?

A. That is right, sir.

Q. Prior to that time, your position?

A. I was President of Richmond Container when it was a corporation, owned 50 percent by me and 50 percent by Leo N. Donati.

[Tr. A-37] Q. And how long a period was this?

A. This corporation was formed on June 1 of 1954.

Q. When did it become a subsidiary?

A. September 9, 1959, Albemarle bought the assets of Richmond.

[Tr. A-38] Q. Mr. Bagley, have you ever been together in the company of your competitors and discussed matters which related to the container industry in the geographical area which we have described?

A. Yes, sir.

Q. Do you recall any specific instances?

A. Where this happened?

Q. Yes.

[Tr. A-39] A. It happened quite often. I have been in the company of the personnel of these companies in Richmond, once in New York, Baltimore, and Charlotte, North Carolina.

Q. With reference to Richmond, was this on one occasion or on more than one occasion?

A. More than one occasion.

Q. Do you recall a specific occasion in Richmond?

A. Yes, sir. I have met with competitors in the office of Herbert Mitchell of Dixie Container.

Q. What do you recall about that meeting, sir?

A. I have been in his office on more than one occasion. Any specific meeting, I can't pinpoint, but I have been there at least three times.

Q. What was the nature of the discussion on those occasions, sir?

A. Well, market conditions in our area.

Q. When you say market conditions, sir, what specifically do you mean?

A. The price level of corrugated containers in our area.

Q. When you say price level, are you referring to a specific dollar and cents number?

A. Well, I am sure there were occasions when a specific dollar and cents number was brought up, yes.

Q. Would this number be with reference to a specific customer?

[Tr. A-40] A. Yes, sir, it could have been.

Q. Were there occasions when a price level with respect

to a specific customer was discussed referring to prices to be charged in the future?

A. I can remember one particular meeting in New York that specific prices were mentioned. For all intents and purposes, the people who attended the meeting could have stayed home, because that fell apart and nothing was done further.

Q. Who attended that meeting, sir?

A. Do you want companies?

Q. Please.

A. Well, certainly Richmond Container was there, Continental Can, The Mead Corporation, Dixie Container, Starr Corrugated, and I am sure there were others, but those are the only ones that I remember.

Q. What individuals were there, sir?

A. I don't remember all of the people. Do I have to say that? Would it be unfair to anyone?

Q. The ones you remember.

A. Well, I was there representing Richmond Container; Jack Burnham, representing Mead Corporation; Isadore Ettra, deceased, representing Starr Corrugated; C. W. Throckmorton, representing Continental Can, which at that time was the Gair Company; Clifford Schroeder, Dixie Container. And at the risk [Tr. A-41] of mentioning someone who was not there, that is all I can think of.

Q. Were there others there?

A. I would think so.

Q. Where did this meeting take place?

A. At the Plaza Hotel in New York City.

Q. What sort of room?

A. It was in the sitting room of a suite.

Q. Do you recall whose suite?

A. I couldn't swear to whose suite it was.

Q. It was not your suite?

A. It was not mine, no, sir.

Q. How did you come to be there?

A. I was invited, I guess.

Q. Do you recall how the invitation was tendered?

A. No, I don't.

Q. What was the purpose of this meeting?

A. I think the intent was to correct some very poor prices in a particular account.

Q. Do you recall the account?

A. American Tobacco Company.

Q. Were there any other accounts discussed?

A. Not to my knowledge.

Q. When you say "correct", Mr. Bagley, will you tell me what you mean?

[Tr. A-42] A. What do you mean, "correct"?

Q. You said——

A. Oh, to correct?

Q. Yes.

A. Well, the prices had degenerated, and we wanted to bring them back to a more livable level.

Q. Would a more livable level involve raising the prices?

A. Yes, sir.

Q. Do you recall when this meeting took place?

A. No, sir, I do not. It was prior to our becoming associated with Albemarle Paper, which was prior to 1959.

Q. Was it after January 1, 1955?

A. Yes, sir.

Q. Was it concerned with corrugated containers sold to American Tobacco in the Southeastern United States?

A. That is right, sir.

Q. Can you tell me what result had been achieved when you left the suite?

A. Well, the intent was there, but nothing was ever accomplished. The price increase did not go in. I put my price increase in, but no one else followed suit, so——

Q. For the printed record, will you explain the motion——

A. I withdrew the price.

Q. At the time you left the suite, what arrangement had [Tr. A-43] been made?

A. What do you mean by arrangement?

Q. Had any decision been reached by persons other than yourself?

A. I announced what my price was going to be, and others did likewise, announced what theirs were going to be.

Q. Were these prices the same?

A. No, sir.

Q. What were the differences?

A. I don't remember, but it was negligible, the difference.

Q. Was it your understanding when you left the meeting

that the others present were going to charge the prices which they had stated?

A. Yes, sir.

Q. Going back to Richmond, Mr. Bagley, were you present at meetings of this kind at any time in Richmond?

A. Nothing similar to this.

Q. Can you tell me what the discussions were about at the meetings which you have attended in Richmond?

A. We discussed the price levels in the State of Virginia and Carolina, when the increase in the price of liner board was announced. Over the years that has been more or less of a signal to increase the price, to pass that on to the customer. That would be discussed.

[Tr. A-44] Q. Would the discussion be whether or not to pass this on to the customer?

A. That is right, sir.

Q. Would you state your intention?

A. Yes, sir. You mean at that time?

Q. At that time?

A. Yes, sir.

Q. Do you have a specific instance in mind, a time?

A. I do not. There was an increase in the cost of liner board in August or September of—you must have it in your records, I don't remember what year it was—but at that time we did increase the cost of corrugated boxes.

Another instance was when certain companies announced in the Wall Street Journal and in the official board market that they were going to increase the price of corrugated boxes. Some of them quoted a $7\frac{1}{2}$ percent increase, others from $7\frac{1}{2}$ to 10. That was discussed at some of these meetings.

Q. These are two specific occasions now to which you have reference, one when several companies announced that they were increasing their box prices?

A. They may be one and the same. They nearly happened simultaneously.

Q. But you do recall instances of meetings with reference to notices which appeared in the paper?

[Tr. A-45] A. That is right.

Q. Also with reference to the time when liner board prices were increased?

A. That is right.

Q. At this time did others announce their intentions?

A. You mean at the particular meeting?

Q. Yes, sir.

A. I am sure they did. I don't remember anyone in particular saying that, but I am sure they did.

Q. Do you recall what companies were represented?

A. Continental Can, Dixie, Miller, West Virginia Pulp and Paper.

Q. Do you recall any other meetings of this kind in Richmond?

A. I attended a meeting at the Raleigh Hotel in Richmond.

Q. Tell us about that meeting?

A. I was there, sir, but I don't remember any particulars about it. I was there, but I don't remember the particulars about it.

Q. Was there discussion at that meeting regarding prices?

A. Yes, sir.

Q. Were these prices to be charged to specific customers?

[Tr. A-46] A. Not that I remember. It could well have been, but I don't remember any particular account.

Q. Was the setting up of an East-West zone in the State of Virginia discussed?

A. Yes, sir.

Q. At that meeting?

A. I don't remember what meeting, but it was discussed.

Q. Tell us what you recall about the East-West zones in Virginia?

A. Well, there was a different base multiplier used in the western part of Virginia as against that used in the eastern part of Virginia, and it was because of the difference in the conditions in the two areas.

Q. Did you participate in any discussions with your competitors regarding the setting up of this base differential?

A. I am sure I did, sir, but when and with whom, I do not remember. We used the East multiplier and also the West multiplier.

Q. Did you participate in these discussions prior to your adoption of the East multiplier and the West multiplier?

A. Yes, sir.

Q. Were these discussions for the purpose of arriving at

a common multiplier to be used, one in the East and one in the West?

A. Yes, sir.

[Tr. A-47] Q. Do you recall the companies with whom these discussions took place?

A. Well, it would be the companies who would be affected mostly by this Virginia area.

Q. Could you name them, please?

A. In that case, it would be Continental Can, Dixie, Miller, and West Virginia.

Q. West Virginia Pulp and Paper?

A. Yes.

Q. What other discussions have you participated in in Richmond?

A. During the time you are speaking of?

Q. Yes.

FOR DEFENDANTS:

A. I don't remember any others. Prior to that, when I was with Robert Gair Company, I was a member of the Fibre Box Association, I attended meetings in New York and I would say other places.

Q. And at these meetings—

A. This was prior to the period of time you are talking about.

Q. Yes, I understand.

Were you a member of the Fibre Box Association after the formation of the Richmond Container Corporation?

A. No, sir.

[Tr. A-48] FOR PLAINTIFF:

Q. With reference to Charlotte, what meeting or meetings do you recall in Charlotte?

A. I remember a meeting that I attended in Charlotte—I attended two meetings in Charlotte. One was a Fibre Box Association meeting.

Q. And the other?

A. The other was not an official Fibre Box Association meeting.

Q. Tell us, please, what you remember about the Fibre Box Association meeting.

A. Well, it was a routine meeting as far as I could see. We were not members of the Association and we had been

invited to attend with the hopes that we would come in as a member. It was strictly a routine meeting.

Q. What happened during the formal part of the meeting? Do you recall?

A. Well, the Secretary of the Association would read the statistics concerning the zone area, the overall picture as compared with the overall picture of the country.

Q. Did this material increase price information?

A. No, sir, not at this meeting.

Q. Average price information?

A. They would have what is known as an overall [Tr. 49] multiplier which would be an indication of a level but as far as I was concerned, it was never anything other than a guide as to how the price structure compared today with, say, last year.

Q. Was that information of any use to you in pricing cartons to a customer?

A. No, sir.

Q. You were not sufficiently desirous of having that information to become a member of the Association; is that correct?

A. Well, we just didn't see fit to join the Association.

Q. At this meeting, were there any discussions or meetings which took place either before or after the formal part of the meeting?

A. After the formal meeting, I was engaged in a conversation with one of my competitors for a particular account.

Q. What competitor?

A. Herb Mitchell of Dixie Container.

Q. What account?

A. Burlington Industries.

Q. What was the nature of the discussion?

A. He wanted me to raise my prices and I wouldn't do it.

Q. During the formal part of the meeting, was there any mention of specific customers?

[Tr. A-50] A. I don't remember. It was a routine, if I may say, a dull meeting. Nothing impressed me.

Q. Do you recall any other discussion which took place at the time of that meeting or before or after?

A. No, sir.

Q. Do you recall any other occasions when you have been in the presence of your competitors and have discussed pricing of corrugated containers in the Southeastern United States?

A. I am sure that I have, sir, but I do not recall any specific time or place.

Q. Was this a common occurrence?

A. I wouldn't call it common, sir. It happened at infrequent times, no regularity at all.

Q. Was there any general purpose to the discussions?

A. I certainly think that pricing had an awful lot to do with it, yes.

Q. Did you have a purpose in participating in these discussions?

A. Yes, sir.

Q. What was that purpose?

A. Price levels.

Q. With regard to price levels, what about price levels?

A. It was an effort to prevent the decline of the price levels in our area.

[Tr. A-51] Q. Now, in addition to these occasions, have you ever sought or given pricing information with respect to specific customers to other manufacturers of corrugated containers in the Southeastern United States during the period from January 1, 1955 to October 14, 1963?

A. Yes, sir.

Q. With reference to the complaint, will you kindly look at the list of Defendants thereon and tell us with what individuals and with what Defendant you have either given or received pricing information with respect to a specific customer during this period in the Southeastern United States.

A. Container Corporation of America, Winston-Salem.

Q. The person?

A. Bill Colvin.

Q. And any other persons with Container Corporation?

A. J. D. Evans.

Q. Any others?

A. No, sir.

Q. Mr. Clay?

A. I don't think I know Mr. Clay. I may have met him, I don't know.

Q. Will you go down the list, Mr. Bagley, and Albemarle

Paper Manufacturing Company? Well, that would be yourself.

A. Yes.

Caroline Container, Mr. C. T. Ingraham.

[Tr. A-52] Q. Anyone else? Mr. Holbrook?

A. I know the gentleman but I don't remember discussing price with him, I may have.

Continental Can, Robert Groner. And John O. Johnson.

Dixie Container, Herbert Mitchell.

Miller Container, Harold Kyle.

Tri-State Container, Alan McDonald.

Q. West Virginia Pulp and Paper, David Orcutt.

Weyerhaeuser, I don't remember the names.

Q. The Old Dominion Box Company, have you given or received this information with anyone representing the Old Dominion Box Company?

A. To set the record straight, I have discussed prices with each of these people I have named but any particular account other than the one I mentioned earlier about Burlington and the American Tobacco Company, I don't remember any particular occasion or account but I have talked with them on prices.

[Tr. A-53] Q. Now, Mr. Bagley, in going through the list you omitted some companies. I would like to ask you specifically with regard to these companies. During this period from January 1, 1955, to October 14, 1963, have you ever given or received pricing information with respect to a specific customer in the Southeastern United States with any person representing Crown Zellerbach Corporation?

A. I do not know, sir.

Q. The International Paper Company?

A. I don't remember, sir, any conversation with anyone in International.

Q. The Mead Corporation?

A. Did I omit Mead before? I can't remember the guy's name. I talked with someone, I don't remember the name. If it were mentioned I would remember.

Q. Mr. Pridgen?

A. I have talked with Pridgen but not about anything in particular.

Q. Do you know Mr. Wainscott?

A. That is the boy, Bobby Wainscott.

Q. The Inland Container Corporation?

A. I am sure I have talked with people at Inland but I don't remember any particular conversation.

Q. Can you identify the individual with whom you have spoken?

[Tr. A-54] A. Yes, but I am afraid I might connect the man with the wrong company.

Q. Do you know Mr. Barney Roberts?

A. Yes, sir, that is the man.

Q. Owens-Illinois Glass Company?

A. No, sir.

Q. No conversations?

A. I beg your pardon. There again I don't know whether Mr. Kipnis was National at the time I talked with him or Owens-Illinois but my conversation with him was just social and had no particular account in mind at all. Nothing about prices.

Q. Any other individuals?

A. No, sir.

Q. St. Joe Paper Company?

A. No, sir.

Q. You have neither given nor received—

Mr. Adams: He said that.

Mr. Sliney: Yes, but will the witness complete his answer?

The Witness: I have never either given or received information from the St. Joe Paper Company.

By Mr. Sliney:

Q. St. Regis Paper Company?

A. No, sir.

[Tr. A-55] Q. With reference to giving or receiving information regarding prices of a specific customer in the Southeastern United States during the period from January 1, 1955 to October 14, 1963, did these discussions take place on the telephone?

A. I would think so in most instances.

Q. Was this a common occurrence?

A. No, it was not common. It happened several times during this period of time you are talking about.

Q. On what occasions?

A. I don't remember any specific occasions but I have talked with these competitors.

Q. Under what circumstances would you ask for this information?

A. There could be several reasons for the conversations. I received more calls than I placed. They had to do with prices of particular accounts.

Q. While you were employed by the Albemarle Paper Manufacturing Company who had the pricing authority at the Richmond plant?

A. There were two of us. Maurice Dozier and myself.

Q. Was this throughout the period from January 1, 1955 to October 14, 1963?

A. That is right, sir.

Q. Have you made long distance calls to obtain this [Tr. A-56] information?

A. I am sure I have but I don't know of any particular one.

Q. Have you received long distance calls requesting this information?

A. Yes, sir.

Q. Did you have a policy with respect to what prices you would give when it was requested from you?

A. It would be the current price or the last quotation, what we were currently selling a box for.

[Tr. A-57] Q. Mr. Bagley, after the meeting at which Mr. Dillard announced the publication of the Old Dominion manual, did you use that manual in pricing containers for sale to customers?

A. Yes, sir.

Q. Was this during the period from January 1, 1955 to October 14, 1963?

A. Yes, sir.

Q. In the Southeastern United States. Did you request— [Tr. A-58] I withdraw that.

Did you request a Gaylord manual?

A. No, sir.

Q. Did you receive one?

A. I don't think so. We may have, but I don't remember whether we did or not.

Q. Did you request an Inland manual?

A. No, sir, I don't remember requesting it.

Q. Did you receive one?

A. I don't remember whether we did or not. The reason it does not stand out in my mind is that for all intents and purposes they were both very similar.

Q. Which manuals do you refer to when you say both?

A. I presume Inland and the Old Dominion.

Q. And the Gaylord?

A. I am not familiar with that.

Q. Have you ever heard of a committee to issue or to revise a manual?

A. No.

Q. With reference to the information regarding specific customer prices which you gave upon request to your competitors did you have any policy regarding the accuracy of the information?

A. Yes, sir.

[Tr. A-59] Q. What was that policy?

A. Well, the right price. I don't know that is the policy but honesty is the best policy, we would tell them the right price.

[Tr. A-237]

Thursday, March 5, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Albemarle Paper Manufacturing Company: Robert P. Buford, Jr., John J. Adams, Charles F. Blanchard.

Other counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF M. F. DOZIER

(PX-13)

[Tr. A-239]. Q. Now, Mr. Dozier, I would like to ask you: What is your present occupation?

A. Sales Manager of Richmond Container Company.

Q. How long have you been in that position?

A. Since mid-summer of 1957.

Q. Now just before that, what was your position?

A. Salesman.

Q. With the same company, sir?

A. Yes.

Q. And for how long in years?

A. Since August 1954.

Q. Now, Mr. Dozier, who is responsible for pricing in your company?

A. Mr. Bagley and myself and myself beginning in mid-summer, 1957.

Q. As of October 14, 1963, what were your responsibilities so far as pricing is concerned?

A. To set the prices.

[Tr. A-240] Q. Now, would you describe for us, please, how price was established for a custom-made container? I would like you to just tell us in your own words, if you will.

A. Find from the customer his specifications, work up the box blank, figure out what machines it is going across and put a per thousand lot price on it.

Q. Let us get a little more detail on that. I presume your first step would be to work up an estimate on sizes and specifications. Is that true?

A. Yes.

Q. Who does that for Richmond Container? What type of personnel does that?

A. Salesmen to a limited degree. Most of it is done within my office and, the two boys who work for me. Do you want their names?

Q. No. After the specification has been determined, what is the next step in determining what price you will quote to the customer?

A. What knowledge I have of the account.

Q. Do you personally make the decisions as to the ultimate price to be quoted?

A. Substantially, yes, sir.

Q. Now, tell us what factors or what considerations go into your determining what the price will be that you are [Tr. A-241] going to quote?

A. Predominantly information I acquire from my salesmen.

Q. Do you use a manual of any type in arriving or partially arriving at your final price?

A. If you are referring to a manual insofar as a formulation for determining that box, yes.

Q. What is your designation of this material or compilation which you used? Well, you stated you used some form of printed materials to assist you in determining price.

A. Yes.

Q. What do you refer to that as?

A. I refer to it as a manual.

Q. Now, does this manual have any particular name? Does it go under the name of any particular company?

A. The one I am currently using does, yes.

Q. What is the name?

A. The Inland Manual.

Q. Will you tell us, please, how long you have used that particular manual?

A. About seven years.

Q. During the period up until October 14, 1963, that you have used this manual, according to your testimony, have there been revisions of the manual during that time?

A. To the best of my knowledge, no, sir, the manual is the same today as it was seven years ago.

[Tr. A-242] Q. By that, do you mean that the figures haven't changed or do you mean the format?

A. You figure an "RSC" box the same way today as you did seven years ago.

Q. Does that manual contain such items in it as a set-up charge or board level?

A. Yes.

Q. Now, first, has the set-up charge changed during the seven years you testified you have been using that manual?

A. To the best of my knowledge, no, sir.

[Tr. A-245] By Mr. Freeze:

Q. Now, Mr. Dozier, awhile back, I was asking you about how you computed the price. In addition to the use of the manual, what other means do you use in arriving at your price?

A. The formulation of the box and what you do to it.

Q. During the period prior to October, 1963, did you, at any time, have contact with persons, personnel of your competitors, concerning any type of pricing information?

A. Yes.

Q. Now, in these contacts, did you either obtain or give price information concerning specific jobs?

A. Seldom obtained, sometimes gave.

Q. Would you tell us what method normally was used in obtaining this information? Is it done by personal encounter, by telephone, or what method?

A. Predominantly telephone.

Q. During what period in the period of 1955 through 1963 did you personally either make or receive this type of information, either give or receive this type of information?

A. Between 1957 and the date, October 14, 1963.

Q. Now I would like to hand you the complaint again [Tr. A-246] and in the same list of defendants, all of whom you have previously stated are your competitors, I would like you to identify the persons for each competitor

with whom you have had contact. Now I would like to make it clear that I am speaking of occasions when you have either given or received prices on specific jobs by telephone?

A. To the best of my knowledge, Container Corporation of America, I know and have talked with Bill Colvin and J. D. Evans and Dolf Clay.

Carolina Container, I have talked with C. T. Ingraham, Carter Holbrook, and Thomas Webster.

Continental Can is Bob Groner, Bill Beams, John O. Johnson, and Crown Zellerbach, Gordon Clark.

Dixie Container, Herb Mitchell, John O. Johnson, Ernie Downes. I don't recall Dixie Container of North Carolina.

Inland Container, Barney Roberts.

I don't recall having any conversation with "Ip", International Paper Company.

Mead Corporation, Bobby Wainseott and Bert Pritchett. Miller Container Corporation, Herb Kyle and Bill Noffsinger. Owens-Illinois, I have but I don't remember who it was.

St. Joe Paper Company, no. St. Regis, no.

Tri-State, Alan McDonald.

Union Bag-Camp, I think it is Ed Faulkner, Tom Fahy, and Frank Grimes, I believe it is.

[Tr. A-247] West Virginia Pulp & Paper, Dave Orcutt and Alan Holt.

Weyerhaeuser; George Elliott and before him was another fellow named Charley somebody, I can't remember his name.

And Waterbury, none.

Q. Now I would like to go back and clarify a few of these that you didn't give us names for. First, I am not sure I understand about International Paper. Is it your testimony that you know of no contact or you don't remember names? I am not sure which.

A. I know some people with International Paper Company but I don't believe I have had conversations, with reference to your question.

Q. How about Owens-Illinois, what is your testimony?

A. I have talked with them but I don't remember the fellow's name off hand.

Q. Would you have had any contact with Mr. Rosenbaum of Owens-Illinois?

A. Yes, Ken Rosenbaum, that is it.

Q. Do you think that is the only one with Owens-Illinois you had contact with?

A. I think prior to him there was somebody but I am not certain.

Q. Now you have stated or you did not give us any names of persons with whom you had contact at St. Joe Paper Company. Will you clarify that for us? You previously [Tr. A-248] indicated that St. Joe was a competitor in that you indicated all defendants were competitors.

A. To the best of my memory I do not recall talking with St. Joe.

Q. They are in competition with you, is that right?

A. Yes.

Q. Now will you tell us please as to St. Regis, are they in competition with you?

A. Not substantially but we bump into them.

Q. You do not recall any conversation with that company?

A. No sir.

Q. Will you state again what your recollection was as to contacts with Waterbury?

A. None.

Q. Mr. Dozier, you have stated that most of these contacts were by telephone. Is that right?

A. Predominantly, yes, sir.

Q. Would they normally be long distance telephone?

A. It depends on the competitors.

Q. Would some of them be by long distance?

A. Yes.

Q. Now have you ever had these contacts during the period prior to October 1963 by any other method other than telephoning?

[Tr. A-249] A. Yes, sir.

Q. Would you describe for us what those other methods would be?

A. I have met with them and I bumped into them, let us say socially someplace, on the golf course maybe.

Q. Now you just stated that you had met with them?

A. Yes.

Q. Will you tell us please what type of meetings that

would be where you had met and exchanged this price information?

A. Would you rephrase that, please?

Mr. Freeze: I will withdraw that.

By Mr. Freeze:

Q. Is it my understanding you testified you had these changes—these exchanges in social encounters and meetings. I understood you to state that. Let me ask you this. Have you had these exchanges at any formal meetings, formal or informal meetings, where there were as many as three persons present?

A. Yes.

Q. Will you tell us the type of meetings those were? Were they trade association meetings or some other type of meeting?

A. Well, I have been to a couple of the trade association meetings as somebody's guest and I have on other occasions [Tr. A-250] sat down and talked with—talked about a particular problem that we had.

Q. When was the most recent meeting of that type that you can recall?

A. The most recent one I think is about March of 1962.

Q. Where was that meeting held?

A. Dixie Container, in Mr. Mitchell's office.

Q. Now I asked you about meetings where you had had these exchanges of price information. What type of exchange of price information did you have at this meeting, March 1962?

A. Actually none.

Q. What was the purpose of the meeting insofar as you understood it?

A. What to do about the announced liner board increase.

Q. Had there been a recent liner board increase?

A. An announced increase, yes, sir.

Q. Do you happen to recall about when it was to be effective?

A. If I am not mistaken, it was March 1, 1962.

Q. Could you tell us about any other meetings which you may have attended, Mr. Dozier?

A. I have been to them, sir, but I am not aware of them right now.

Q. I would like to ask you about any other price changes in the board level which affected your product other than [Tr. A-251] the March 1962 change to which you have referred?

A. Changes in price level?

Q. Yes.

A. About six months before that, August-September of 1961, we tried to get approximately a ten percent increase. Prior to that the prices were what we thought was the gutter in those days.

Q. Now, Mr. Dozier, I was asking you a minute ago about your arriving at a price to be charged a customer or to be quoted your customer for a specific box. Will you describe for us please how you used the information which you obtained in these contacts with competitors in your price?

A. For information?

Q. Would you tell us please how you used it for information? Will you go into a little more detail how you worked out the price after getting this information?

A. I don't understand your question, Mr. Freeze. The basic principle I used is the information acquired from my salesmen and my own knowledge of related market. That is where we started.

By Mr. Freeze:

Q. Mr. Dozier, going back to the occasions when you exchanged price information as to specific jobs with representatives of your competitors, I would like to ask you [Tr. A-252] where you obtained the information to give to a competitor in response to his request?

A. From our estimate sheet.

Q. Would you tell us a little bit more about what an estimate sheet is, please?

A. The sheet on which we figure out per M price of the box.

Q. Do you keep those in a file or some other compilation in your office?

A. Yes, sir.

Q. Will you tell us, please, how long do you keep those? Do you have a system of keeping them a year, six months,

or two years, or how do you work that?

A. We keep them the current year and two years back. In other words, '64, '63, '62.

Q. At the end of three years, do you mean that they are then destroyed?

A. For all practical purposes, yes, sir.

Q. I presume that file is in your office, is that your testimony?

A. Yes, sir.

Q. When you give a price to a competitor is this price the most recent price at which you have sold?

A. Yes.

Q. Do you ever give this type of information in situations where you may have quoted a price to a customer but perhaps for some reason not consummated the sale?

A. Yes.

Q. You state that you take this information from your file. Do you give the person requesting the information the truthful information in all circumstances?

A. Yes, to the best of my knowledge.

[Tr. A-408]

Thursday, March 5, 1964

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Miller Container Corporation: Robert P. Buford, Jr., Richard G. Joynt, Charles F. Blanchard.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF HAROLD P. KYLE

(PX-22)

[Tr. A-409] Q. Mr. Kyle, for the record, will you state your full name and address, please?

A. My name is Harold P. Kyle. I live at 1883 Arlington Road, Southwest, Roanoke, Virginia.

Q. Would you state your position, please?

A. I am Chairman of Miller Container Corporation.

Q. As Chairman, are you the chief executive officer of the corporation?

A. I am.

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[Tr. A-415] Q. Can you tell us, sir, what your purpose was in attending that meeting?

A. Yes. I was very much interested in passing on the pending or the actual price increase but wanted to learn the feeling of the other people similarly engaged concerning the passing forward of the increase and it was to learn their attitude toward it that I attended.

Q. Do you recall, sir, whether anyone at that meeting told you that they had been ordered to "pass forward," to increase their price?

A. I don't recall such a thing but it could have happened. The answer is no, I do not recall.

Q. Can you tell us, sir, what you did learn as a result of that meeting?

A. As I remember it, I left the meeting with some feeling of confidence that the price increase would be passed on.

Q. When you say passed on, sir, do you mean passed on by each of the companies which were represented at that meeting?

A. I got the impression that the persons concerned were desirous of passing it on. I don't know about each specific one but the general attitude, the attitude among them generally, seemed as I remember it to be desirous of the price increase being passed forward the increased cost.

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[Tr. A-418] Q. At, or about the time that this set-up charge was increased, sir, do you recall any possible discussions regarding the need for an increase in set-up charges?

[Tr. A-419] A. The need for an increased price was a constant topic of conversation. I am sure the set-up had its part in that.

Q. Can you tell me, sir, in connection with this discussion which was constant, where would these discussion take place?

A. Well, in general terms, I suppose any place that two or more might have occasion to talk about price, either within or without the organization.

Q. When you say two or more, sir, you mean?

A. Two or more people.

Q. Would these be competitors?

A. Possibly.

Q. Do you recall, sir, whether at any of the meetings that —do you recall attending any meetings at or about that time?

A. I don't recall specifically attending any meetings but I would like to try to confine the discussions to which I referred a few moments ago, to conversations between competitors. I have a very distinct recollection of my boss having several conversations with me about that topic of increased prices.

Q. Who was your boss at that time, sir?

A. The President of the Company, at that time, was J. Clifford Miller, Jr.

[Tr. A-420] FOR DEFENDANTS:

Q. Do you recall having discussions with him regarding

A. He urged me on numerous occasions to increase my price.

Q. Not with specific regard to set-up charges?

A. Any way I could do it.

Q. Sir, aside from these discussions with Mr. Clifford, would you say it was common occurrence for you to discuss this with your competitors?

A. To discuss what?

Q. The need for an increase in prices.

A. I would say it would be common, particularly at the times when raw material costs were increasing. At those times, I would say that it would be rather generally a topic of conversation, yes, sir.

Q. Among competitors?

A. Yes, between competitors and customers and within and without the organization.

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[Tr. A-425] Q. Oh, I am sorry. I misunderstood. Was it a common practice for you personally, sir, to seek confirmation of this sort from a competitor?

A. Yes.

Q. It was?

A. Yes.

Q. Was this true throughout the period from 1955 to—excuse me, from January 1, 1955 to October 14, 1963?

A. Yes. I had contacts with the competitors all during [Tr. A-426] that period, yes, sir.

Q. Did your competitors request the same sort of confirmation from you, sir?

A. Yes, sir.

Q. What would be the nature of your request for, well, confirmation in this case? For what would you ask?

A. In this case I probably said to Mr. Duggan, "We have this information. Is this right? Is this your price and are you performing those services?" and so on and so forth, in

an attempt to verify the information which was transmitted to me.

Q. Would this be the nature of the questions that you would ask on all of these occasions? Would there be other information you would seek from competitors on the occasion of these requests?

A. Each situation would have its own set of circumstances, of course. It might not always be a price, it might not always be a storage proposition, but whatever the circumstances relative to the case were, I would ask specifically about them.

Q. Do you recall, sir, what some of these circumstances were?

A. I think they would all be, most all of them would resolve around either specifications or price or service. They would all fall within the purview of those things.

[Tr. A-427] Q. Would these calls only be made, sir, where you had, as in this case, been told by the purchasing agent what his price was?

A. All the calls that had to do with verification, such as this one was, would have to be made, I would have to have something to verify it.

Q. Were there other calls?

A. Yes.

Q. Will you please tell us about those calls, sir?

A. Calls, you mean, where competitors were contacted?

Q. Yes, sir.

A. Yes, where we were desirous of making a quotation and had been otherwise unable to determine what the market was, we would then attempt to find out through our competitors or from our competitors.

Q. What would you ask your competitors, sir?

A. Again, it depends on what I had. I would in some fashion attempt to elicit from the competitor information as to what the price was.

Q. Can you tell me, sir, was this information also sought from you?

A. Yes.

Q. Can you tell me, sir, and would the competitor seek to elicit the same information which you have described?

A. Yes.

[Tr. A-428] Q. On those occasions, sir, can you tell me what the price was—I withdraw that question.

Can you define for me, sir, what you mean when you say, "What the price was"?

A. Well, the price at which items were being purchased from the competitors by this prospective customer.

Q. Would this be with reference to a specific customer?

A. Yes.

Q. Would that be true on all of these occasions, sir?

A. If a specific price were involved, it would always be with respect to a specific customer, yes.

Q. The information you would give to your competitor when he requested this information would be the price—what price would you give to your competitor when this information was requested of you?

A. Well, whatever price we had in our files.

Q. Would that include a price which you had quoted to a customer?

A. Which we had quoted? Yes, sir, it might.

Q. Although no order had been received in connection with that quote?

A. I suppose—yes, we certainly didn't sell everybody we quoted, and I suppose we gave price information upon quotations which we had made but had not sold, I suppose that is true.

[Tr. A-429] Q. Would it be true it was your practice to give the most recent price that you had quoted?

A. The most recent price? Yes.

Q. That you had quoted?

A. Yes.

Q. Is it possible, sir—Withdraw.

When you quoted a price to a customer, how was this quote delivered, sir?

A. Well, usually by mail. Frequently, however, it could be a telephone quotation or a hand-delivered quotation.

Q. Who would deliver it by hand, sir?

A. Usually the sales representative.

Q. Was it your practice to have quotes delivered through your sales representatives?

A. Not very frequently, but occasionally this would happen.

Q. The general practice was what?

A. Mail.

Q. From your office directly to the customer, is that correct?

A. Yes.

Q. Were there occasions, sir, when you received requests for this information in connection with accounts to which you had just recently mailed a quote or had just submitted the quote to your sales representative for delivery?

[Tr. A-430] A. I don't recall specifically instances of this. By recently, by recent submission, how do you mean?

Q. Well, what I am asking, sir, is whether there were occasions on which you gave this information upon request without knowing whether the price had yet arrived at the customer's office?

A. I don't recall any such occasions.

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Q. Before going into the complaint will you tell us the geographical area in which your company solicits business for the sale of corrugated containers?

A. Yes, sir.

Q. This would be for the period from 1955 to 1963 and restricted to the Southeastern United States as defined in the complaint and as I have previously defined it to you?

A. We solicit box business in an area within a 170 mile radius of Roanoke.

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[Tr. A-431] Q. The containers which are made by the Miller Container Corporation, are these containers made to standard specifications?

A. There are basic specifications which are laid down [Tr. A-432] in the uniform freight classification according to which the boxes are made. In that sense they are standards but as to size and construction and so forth, there is no standard.

Q. As to size, construction and so forth, how are these specifications determined?

A. Well, the consideration of the requirement, use requirement of the box and the measurement of the item that is to go in it.

Q. Would you say, sir, that the customer gives you the specifications for this box?

A. Not in all cases. In some cases we as prospective suppliers will develop a specification for a company.

Q. For a specific customer?

A. For a specific customer.

Q. Would those specifications differ from those of another specific customer?

A. Yes, they might.

Q. Are containers sold by the Miller Container Corporation on a delivered basis?

A. Yes, they are.

[Tr. A-433] Q. Is this true in all instances?

A. No, not in all instances, but in a vast majority of cases they are sold on a delivered basis.

Q. Sir, with reference to the complaint filed in this action, with what persons have you personally either given or received this information during the period? The defendants are listed on the front.

A. Yes, but I don't see any persons.

Q. I am asking you, sir, to name the persons with whom you have either given or received this information.

A. Very well. Container Corporation of America, Mr. G. W. Colvin, Mr. Adolph Clay, and Mr. J. D. Evans.

Albemarle Paper Manufacturing Company, Mr. A. J. Bagley and Mr. Maury Dozier.

Carolina Container Company, Mr. C. T. Ingram, Jr., and Mr. Carter Holbrook.

Crown Zellerbach, Mr. Gordon Clark.

Dixie Container Corporation of Virginia, Mr. Herbert Mitchell and Mr. Jehan Johnson in other years. He is no longer with Dixie Container.

Dixie Container Corporation of North Carolina, Mr. Joe Schwind.

Inland Container Corporation, Mr. Barney Roberts, [Tr. A-434] Mr. Frank Talbot.

International Paper Company, Mr. Hugh Reid.

Owens-Illinois, Mr. Ken Rosenbaum.

St. Joe, no experience.

St. Regis, no experience that I can remember.

Tri-State Container, Mr. Alan McDonald.

Union Bag-Camp Paper, Mr. Lou Wulff.

West Virginia Pulp and Paper, Mr. Dave Orcutt.

Weyerhaeuser Company, Mr. Duggan, Walter Duggan.

There is one other from Weyerhaeuser, whose name I can't recall at the moment. I will try to think of it and supply it.

Q. Do you know Mr. Wood?

A. Yes. Mr. Ivan Wood?

Q. Yes.

A. Yes.

Q. Would that be the person to whom you have reference?

A. No. Mr. Ivan Wood used to be located in this area but has been moved away. Since he has been moved away, I have not had any price exchange information with him.

Q. Do you know Mr. George Elliott?

A. I believe that I have met Mr. Elliott, but I can't recall.

Q. Would these exchanges have taken place with Mr. Elliott?

A. It is possible, although the name does not ring a [Tr. A-435] bell.

Waterbury Container, Mr. Joe Reynolds.

Q. Sir, have you ever exchanged information with a representative of the Old Dominion Box Company during the period which we have described?

A. Yes, sir.

Q. With what person?

A. Mr. Ivan Wood. He is the only one that I can remember, but there is one more. I can't recall his name.

Q. Thank you, sir. How were these requests for information transmitted?

A. Usually by telephone.

Q. Were long distance calls involved?

A. Yes.

Q. Sir, was it a common practice for you to receive or to give price information to your competitors throughout this period?

A. It was done throughout the period, yes.

Q. Was it done with any frequency?

A. Well, each time we thought we had a need for it, we tried to employ the device. We were not always successful in making the contact or in obtaining the information.

Q. Sir, was it a common practice that whenever you needed this information you would attempt to "employ the device"?

[Tr. A-436] A. It was a common practice for us to contact our competitors when we thought we had reason to do so.

Q. Sir, do you recall at any time a reference within the industry to an east zone or a west zone in the State of Virginia?

A. Yes, sir.

Q. Will you tell us what you recall?

A. Yes. I don't remember the time of this occurrence, but it was in the, I should think it was within the first half of the period that we are concerned with in this proceeding, that box manufacturers out of Baltimore began to make very significant raids or inroads, or whatever is the proper term, into Virginia business, business which had been previously handled by what we like to think of as local producers.

This seemed to be concentrated in Tidewater and west, past Richmond. In order to meet this situation, the competition, in the east and thus preserve what business we had there and still not destroy price-wise the business that we had in the west, the western part of the State, we quoted suitably in the eastern part of the State to meet the Baltimore competition and tried not to let that reflect into our activity in the western part of the State.

Now, it was at this time that we abandoned Tidewater [Tr. A-437] Virginia representation, we just pulled out at this time, but nevertheless there was a price differential which we employed as between the western part of Virginia and the eastern part of Virginia, which developed under the circumstances which I have tried to describe.

Q. Sir, when you say "we employed", to whom are you referring?

A. Miller Container.

Q. To your knowledge, sir, did any of your competitors employ this same price differential?

A. I am sure they did because eventually the Baltimore competition did not get all the business.

Q. Do you recall any discussions with your competitors concerning this circumstance?

A. Yes, I do.

This type of raiding is awful difficult to pin down and to evaluate in terms of the area involved. We, through contacts with our competitors, attempted to find out what localities in their experience were involved in this raiding business that was going on at the time.

Q. Did you attempt to determine what measures they would take in connection with this raiding?

A. Who is they?

Q. Your competitors?

A. I don't recall specifically having done so, but I [Tr. A-438] am more than just a little sure that the meeting of these prices and the elimination of this raiding was as important to them as to us, and I am sure that they felt as we did about it.

Q. In your efforts to meet this raiding, did you solicit the aid of your competitors?

A. Insofar as defining the territory in which it was going on, we certainly did, yes, sir.

Q. How did you go about soliciting this aid?

A. I don't recall. I am sure that it was done by telephone, and we did have a meeting among the local Virginia people on this subject. Now, when that was, I can't tell you, but there was a meeting.

Q. Do you recall who were present at this meeting?

A. I recall that Mr. Mitchell and Mr. Groner were there. I recall them specifically. I do not recall any others.

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[Tr. A-656]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, The Mead Corporation: Stanley A. Freedman, Richard L. Wharton.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF V. C. SHUTZE

(PX-32)

[Tr. A-657] Q. State your name and home address?

A. Virgil Shutze, 3111 Arden Road, Northwest, Atlanta, Georgia.

Q. With whom are you employed, Mr. Shutze?

A. I am with the Mead Containers Division of the Mead Corporation.

Q. Is the Mead Container Division the division of the Mead Corporation which manufactures and sells corrugated shipping containers?

A. Yes.

Q. What is your present position?

A. I am National Accounts Sales Manager for the Mead Containers Division.

Q. Did you say National Sales Manager?

A. National Accounts Sales Manager.

Q. How long have you been in that position, Mr. Shutze?

A. Since January of this year.

Q. Prior to January what was your position?

A. Prior to that I was sales manager of the Southern Region.

[Tr. A-659] Q. Mr. Shutze, during the period starting in 1960 when you were sales manager for the Southern region and up until October 14th of last year, what were your responsibilities insofar as pricing of containers was concerned?

A. The pricing responsibility was up to the sales

manager of the individual plant but he, in turn, was my responsibility. I got into very few specific pricing instances. I was responsible for the general selling price at the plant but not to any degree on specifics.

Q. Mr. Shutze, what was the policy of your company as of October, 1963, in regard to the seeking of price information from competitors?

[Tr. A-660] A. We received a memorandum in June, 1961, signed by the Chairman of the Board of Mead Corporation, stating emphatically that no exchange of price information could exist.

Q. Would you give me that date again, please?

A. It is in June. I am not sure of the date. It was June, 1961, I think.

Q. Now, what was the practice in this respect up until that date?

A. I think my sales managers had been exchanging some price information.

Q. Prior to that date in June 1961 did you ever have occasion to request price information from a competitor concerning any specific customer?

A. I probably did. I don't remember any specifics but I probably did.

Q. Could you name any persons from whom you did request such information?

A. I think I talked to Bob Groner with Continental Can and I talked with Frank Talbot at Inland Container and I also could have talked to Barney Roberts at Inland.

Q. Now by "talked" do you mean that you requested price information from them?

A. Well, now you are getting back to where I don't have too much memory on that. I can't tell you whether I called them or whether they called me but I remember talking [Tr. A-661] to them.

Q. And your talk included the request by either you or the other party of price information on a specific job, is that right?

A. That is right.

Q. Now still referring to the period prior to June 1961,

again, do you know if your sales managers received requests for pricing information on specific jobs?

A. I think they did.

Q. When they did receive such requests were—where did they obtain the information to supply to the person requesting it?

A. You had better rephrase it. I lost you.

Q. I will be glad to. When your sales managers received requests for pricing information where did they—from what source did they obtain the information?

A. If they wanted to give it they would go to the files to get it.

Q. On these occasions what information was requested?

A. I would imagine that they requested the price we had been charging the customer.

Mr. Freedman; Mr. Freeze, are you asking Mr. Shutze what requests were made to his sales managers?

Mr. Freeze: Right, insofar as he knows.

By Mr. Freeze:

[Tr. A-662] Q. Now insofar as you know did the sales managers under you supply this information upon request?

A. It is a little difficult for me to answer for them. I just don't think I could make a flat statement as to whether they did or whether they didn't.

Q. Still speaking of the sales managers under you, were they permitted by you to give such information?

A. Prior to the memorandum I don't remember giving them any instructions not to do it.

Q. Do you know, Mr. Shutze, if it was a common practice to supply that information upon request prior to June 1961?

A. Could I get that question again?

(The question referred to was read by the reporter.)

The Witness: Probably

By Mr. Freeze:

Q. Now what change took place in June 1961?

A. A memorandum came out from Mr. Whitaker who is

Chairman of the Board of the Mead Corporation in Dayton and he wrote this memorandum which was mandatory.

Q. What was the nature of the memorandum?

A. That we were not to discuss prices with any competitor.

Q. Now am I to understand that that was at all echelons without exception as to any personnel?

A. It was sent to every sales manager in the Mead Corporation [Tr. A-663] which included the Mead Container Division.

Q. Now, Mr. Shutze, did that prohibition continue thereafter?

A. It was relaxed somewhat in the fall of 1961 for a period of possibly a couple of months.

Q. How did you learn of the relaxation of the policy?

A. Well, I had complained to our management that we were instructed to increase prices and that I thought that it was practically impossible to increase the price if the purchasing agent stated that the other suppliers had not increased and we had no way of getting that information. Now if you increased it, you could take a chance or back off and keep your business.

Q. When you brought this out to your headquarters what was the result?

A. We just continued to lose position with our customers and it got to be an untenable situation.

Q. What I would like to know is how did the relaxation of the policy take place? Were you given permission?

A. Through a telephone call from the Division Headquarters in Cincinnati to me.

Q. What did they tell you, Mr. Shutze?

A. That they thought for me to do my job I would have to seek the level, the price level, in some of these accounts where we were groping.

[Tr. A-664] Q. Was this relaxation as to you personally or to you and your sales managers?

A. It was to me personally.

Q. You mean your sales managers were not given the right to seek the information at that time?

A. That is right.

Q. Did you relax the policy with your sales managers?

A. To some extent.

Q. Now I believe you stated that this relaxation of the policy occurred in the fall of 1961 and lasted about two months? Correct me if I am mistaken.

A. That is about right.

Q. Is that your testimony?

A. Yes.

Q. Then what happened?

A. Then we were called to Dayton and given a memorandum date of February 1962 and the memorandum was re-written in the same vein or the same substance as the first one and we were told that we were not to discuss any prices with any competitors and there would be no relaxation whatever and that is still in existence.

Q. Since February 1962 and up until October of last year that has continued?

A. Yes, sir.

Q. To your knowledge, has there been any relaxation [Tr. A-665] even down the line or any place in your region?

A. Well, if it did they would be going definitely against instructions.

Q. Now, going back to the date of June, 1961, when this policy was first enunciated, I believed you said, he—strike that.

During the period from 1960 when you became manager of the Southern Region and up until June, 1961, was there any period when you and your sales managers were not permitted to give and receive price information on specific jobs?

A. Will you let me have the question again?

(The question was read by the reporter.)

The Witness: No.

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[Tr. A-80]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, The Mead Corporation: Stanley A. Freedman, Richard L. Wharton.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF DAVID J. BLOOM

(PX-7)

[Tr. A-81] Q. Will you state your full name, address and business address, please?

A. David J. Bloom, 1290 Beach Valley Road, Northeast, Atlanta, Georgia. Business address, Mead Containers, 950 West Market Street, Northwest, Atlanta.

Q. Your employer?

A. The Mead Corporation, Mead Containers Division.

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Q. Since 1957, sir, what position have you held and at what dates have you held them with the Mead Corporation?

A. In 1957 when Mr. Shutze went to New York I was appointed sales manager of the Atlanta District and I have held essentially that same job.

Q. What does the Atlanta District comprise?

A. The Atlanta District comprises the States of Georgia, Alabama, South Carolina, and east Tennessee.

Q. What are your responsibilities as sales manager, of the Atlanta District?

A. My responsibility as sales manager is to sell as [Tr. A-82] many boxes as I possibly can and I have full responsibility for the pricing of the boxes produced in the Atlanta plant.

Q. Does anyone share that authority, sir?

A. No, sir.

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[Tr. A-86] Q. With reference to the period between the spring of 1957 and late 1959 did you at any time request from a competitor the prices which he was then charging a specific customer?

A. Yes, I did. Past market requests.

Q. During that same period did you ever supply the—a competitor the price which you were then charging a specific customer?

A. Yes, I have.

Q. These questions have reference to corrugated?

A. Corrugated shipping containers.

Q. In the Southeastern United States?

A. In the area in which my plants operate, the states as I gave you before: Georgia, Alabama, South Carolina and east Tennessee.

Q. That area was the same then as it is now?

A. Yes, sir.

Q. During the period from late 1959 to October 14, 1963 have you ever requested from a competitor the prices which he was then charging a specific customer for corrugated containers in the Southeastern United States?

A. Would you repeat the question?

Q. During the period in late 1959 to October 14, 1963, have you ever requested from a competitor the prices which he [Tr. A-87] was then charging a specific customer for corrugated containers in the Southeastern United States?

A. Yes, I have up until the directive that was issued by the President of our Corporation, Mr. Morris, in June of 1961. Then after a slight relaxation in the fall of 1961 I was called into Dayton in the spring of 1962, the early part of 1962, and it was reiterated to me that I am to have no conversations with any of the competitors regarding anything nor even have any appearance of doing it. Since that time I have not sought or given any information.

Q. Are you able, sir, to more specifically identify the cut off date in 1962, the time, the month?

A. I would say it is April or May.

Q. Sir, during the period from late 1959 until April of 1962 have you at any time supplied the—a competitor the prices which you were then charging a specific customer for corrugated containers in the Southeastern United States?

A. April 1962? I had supplied past markets to June of

1961. Then I did not supply any until the fall of 1961. In a limited way, yes, the early part of 1962 as I explained to you but nothing since the early part of 1962.

[Tr. A-88] Q. Sir, during the period from the spring of 1957 to late 1959 did you consider the Container Corporation of America a competitor of yours?

A. Yes.

Q. Would you name for me please the individuals with that company to whom you gave the information with respect to prices of specific customers which we have previously mentioned?

A. I have talked with Mr. Dick Lindsey, Chattanooga, Mr. Alday, Fernandina, Florida. And Mr. McCorkle, I believe, in Knoxville.

Q. Did you during this period also receive information of this kind from these individuals?

A. I would say that I did.

[Tr. A-89] Q. The Albemarle Paper Manufacturing Company?

A. No, sir.

Q. The Carolina Container Company?

A. Yes, sir.

Q. Did you consider Carolina Container Company a competitor of yours?

A. In South Carolina.

Q. To what individuals of the Carolina Container Company have you given the information with respect to a specific customer's price which we have previously discussed?

A. I recall I have not done any of this now in about two years.

Mr. Wharton: The question is still the period 1957 to 1959?

Mr. Sliney: Yes. I am limiting this question entirely to that period.

The Witness: I couldn't say. I don't recall. I have given them past market information on some occasions.

By Mr. Sliney:

Q. But you cannot identify the period?

A. No, sir.

Q. Can you identify the person?

A. It could have been Carter Holbrook.

Q. Is it your recollection that it was Carter Holbrook?

A. I think it could have been. It has been so long ago.

[Tr. A-90] Q. Do you know Mr. Ingram?

A. I have met Mr. Ingram. It could have been Mr. Ingram, it has been so long ago.

Q. Have you received this information during this period from Mr. Ingram or Mr. Holbrook?

A. I could have. I just don't recall.

Q. Sir, perhaps it will ease your problem if instead of attempting to identify individuals you will tell me whether during this period you have given or received from a competitor the price which you were then charging or which he was then charging a specific customer.

Now by reference to the period again I am attempting to cover the period from the Spring of 1957 to late 1959. I would like to start once again if I may.

A. All right.

Q. The Container Corporation of America?

A. Yes, sir.

Q. Were they competitors of yours?

A. Yes, sir.

Q. The Albemarle Paper Manufacturing Company?

A. No, sir.

Q. Were they competitors of yours?

A. Not considered as such. Never heard of them in my area.

Q. The Carolina Container Company?

[Tr. A-91] A. Yes, sir.

Q. Were they competitors of yours?

A. Yes.

Q. The Continental Can Company, Inc.?

A. Yes, sir.

Q. Competitors?

A. Yes, sir.

Q. Crown Zellerbach Corporation?

A. Yes, sir.

Q. Competitors?

A. Yes, sir.

Q. The Dixie Container Corporation?

A. No, sir. I would not consider them as competitors in South Carolina.

Q. Dixie Container Corporation of North Carolina?

A. No, sir.

Q. The Inland Container Corporation?

A. Yes, sir.

Q. The International Paper Company?

A. Yes, sir.

Q. With each of these companies now you have either given or received information which we have previously discussed and you consider those that you have named as your competitors, is that right?

A. I have given or received—will you repeat the [Tr. A-92] question?

Mr. Freedman: Could you divide the question into two separate parts? I think the witness is confused. He could answer yes to one half and not the other. Also could you restate the information about prices which was previously discussed? I think that is kind of confusing. The witness testified that he did give and receive past market information.

FOR PLAINTIFF:

Mr. Sliney: Let us do this. Will you define for me what you mean when you say past market information?

The Witness: Past market information is the price at which the last order and the most recent order of boxes went for or was quoted at.

FOR DEFENDANTS:

By Mr. Sliney:

Q. With reference only to whether or not these companies were considered by you to be competitors of yours?

A. I am with you. I have answered to the best of my ability yes or no so far.

Q. Fine. Then I will pick up with the International Paper Company.

A. Whether I either gave or received?

Q. Let us just restrict ourselves—

A. As to whether or not I consider them competitive?

Q. Yes.

[Tr. A-93] A. Yes, I consider International Paper Company a competitor.

Q. Miller Container Corporation?

A. No, sir.

Q. Owens-Illinois Glass Company?

A. Yes, sir.

Q. St.-Joe Paper Company?

A. What is the period again?

Q. The Spring 1957 to late 1959.

A. I don't know, sir, exactly.

Q. St. Regis Paper Company?

A. Yes, sir.

Q. Tri-State Container Corporation?

A. Yes, sir.

Q. Union Bag-Camp Paper?

A. Yes, sir.

Q. West Virginia Pulp & Paper Company?

A. Yes, sir.

Q. Weyerhaeuser Company?

A. Yes, sir.

Q. Now, sir, I would ask you the same question with regard to the period from late 1959 to October 14, 1963. Did you consider these companies to be your competitors? Container Corporation?

A. Yes, sir.

[Tr. A-94] Q. Albemarle Paper Manufacturing Company?

A. No, sir.

Q. Carolina Container Company?

A. Yes, sir.

Q. Continental Can Company?

A. Yes, sir.

Q. Crown Zellerbach Corporation?

A. Yes, sir.

Q. Dixie Container Corporation?

A. Yes, sir.

Q. Dixie Container of North Carolina?

A. No, sir.

Q. Inland Container Corporation?

A. Yes, sir.

Q. International Paper Company?

A. Yes, sir.

Q. Miller Container Corporation?

A. No, sir.

Q. Owens-Illinois Glass Company?

A. Yes, sir.

Q. St. Joe Paper Company?

A. Yes, sir.

Q. St. Regis Paper Company?

A. Yes, sir.

Q. Tri-State Container Corporation?

[Tr. A-95] A. Yes, sir.

Q. Union Bag-Camp Paper Corporation?

A. Yes, sir.

Q. West Virginia Pulp & Paper Company?

A. Yes, sir.

Q. Weyerhaeuser Company?

A. Yes, sir.

Q. Waterbury Corrugated Container Company, otherwise known as Blue Ridge Container?

A. Yes, sir.

Q. With reference to the entire period, from the Spring of 1957 to April of 1962, this being the date that you have given as the final cut off of contacts with competitors—

A. All right.

Q —have you at any time during this period either given or received from a competitor the information which you have referred to as past market information?

A. Yes, I have.

FOR PLAINTIFF:

Q. With reference to the occasions when you have been called by a competitor—I will withdraw that. How have these requests for information been received by you?

A. By telephone call.

Q. On these occasions where do you obtain the [Tr. A-96] information to supply to the competitor?

A. From my files.

Q. Would you describe the files?

A. We have a classification card which shows the last price which the box was sold. I might call it a specification jacket in which we keep an estimate, keep our cost, and we record the last price on the back of the card at which the

boxes were sold. I call my sales servicing manager and ask him to bring in the estimates in the jacket. I look at the price and I relate to a competitor as a certain base or a certain base less a percentage as shown on the Inland estimating manual which I do use as one of my estimating tools.

Q. Which manual, sir?

A. Inland.

Q. Do you make any notation on the card at this time?

A. No, sir.

Q. On those occasions when you have sought this information from your competitors, what have you asked for?

A. When I have sought the information?

Q. Yes, sir.

[Tr. A-97] A. I asked what did the last order of boxes go for or what is your most recent level that you last sold for.

Q. With respect to a specific customer?

A. Correct.

Q. You always received this information upon request?

A. Practically always.

Q. Have you ever refused to give this information upon request?

A. No, sir.

Q. Is it true that the information which you give in all cases comes from the estimate—is it true that the information which you have given in all cases comes from the records you have referred to as the specification jacket?

A. Or the estimate I run on the Inland Manual, one of the two. I have them together to look at it. The Inland Manual, as you are already aware, has many board decimals, board factors or level. I would say our last price was \$13 or \$14.30 less 5 percent, or whatever the case may be.

Q. Sir, you earlier included within your definition of past market, quotations, is that correct?

A. Yes, sir, that have been made.

Q. Do these quotations appear on the specification jacket?

A. No, sir. They appear on the estimate.

Q. On the estimate which is included within the jacket?

[Tr. A-98] A. Correct.

Q. When giving this information during the period to which we have reference, do you refer both to the estimate and to the specification jacket to see whether there is a quotation later than the last sale?

A. If there was a quotation later than the last sale, it would so show. It would be shown on the estimate.

Q. Would that be the figure which you would have given, the later quotation?

A. If we had quoted, that would be the figure, yes.

Q. During this period, sir, when you gave this information to competitors, what benefit did you derive from this service?

A. Well, I had hoped that they, in turn, would give me the same information.

Q. Sir, when you obtained this information from a competitor, were you able to compute the price of a box from the information which he had given you?

A. Yes.

Q. Is this the way in which you used the information which you obtained?

A. Yes.

Q. Did the giving or receiving of this information involve long-distance calls?

A. Yes.

[Tr. A-99] Q. Under what circumstances did you seek this information from competitors?

A. When we have an inquiry from our salesman who on occasions bring samples in, we can see what the competition is by looking at the box maker stamp or the salesman tells us who the competition is and sometimes the salesman also tells us what the purchasing agent told him the price was.

We take that price and run an estimate on it, run our cost on it, and if it looks reasonable, I exercise my judgment as to whether or not I should use it or perhaps call a competitor to see if the information I have is correct.

Q. Are there any other occasions on which you would seek the information from a competitor?

A. Yes. As a last resort, if I did not have any information from my salesman, as a last resort I would call a competitor.

Q. This again is with reference to the period prior to April of 1962?

A. Yes, sir. I want to reiterate again that I have not been in any conversation since 1962. I think the month could be April. I have not sought or received or even had the appearance of it.

FOR DEFENDANTS:

Q. Mr. Bloom, I show you document MEA Number 00744. I have not made copies of this document, but it is a very simple [Tr. A-100] matter to tell you what it purports to be.

The first page purports to be an envelope bearing in the upper lefthand corner the words "Corrugated Container Division of Continental Can Company, Inc.", with the address 501 Coolidge Street, Post Office Box 324, New Orleans, Louisiana. There is a date stamp, August 11, 1961, and it is addressed to Mr. David J. Bloom, Care of Mead Atlanta Paper Company, 950 West Marietta Street, Northwest, Atlanta, Georgia. The postmark is August 9, 1961.

The second page is what purports to be an announcement by Continental Can Company to their customers dated August 7, 1961, and indicates generally that there will be an increase in the price of corrugated containers.

The third page is dated August 9, 1961, and it reads: "We have advised the attached list of customers of the price increase in compliance with the enclosed card. Continental Can Company, Inc., Corrugated Container Division."

There then follows a list of customers, what purports to be a list of customers, 14 pages long.

A. We were not Mead Atlanta Paper Company in 1961.

Q. Sir, do you recall receiving that envelope and the items attached?

A. Yes, I do.

Q. What do you recall about receiving it?

A. This came in the mail unsolicited, and I am certain [Tr. A-101] it is in error, because 90 percent of these accounts do not operate within my area. Why I got it, I could not tell you. I would say that the envelope was misdirected.

Q. Was the information contained therein of any value to you?

A. None whatsoever. I couldn't identify a single account on the first page. Again I would say this was misdirected to me. I am guessing, would say this is an intercompany, strictly a guess, a inter-company Continental Can.

Q. Did you discuss this with any representative of the Continental Can Company?

A. I did not.

Q. Did you discuss having received this with anyone?

A. I did not.

[Tr. A-547]

Friday, March 6, 1964.

APPEARANCES:

For the Plaintiff: Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, International Paper Company: Henry L. King, Davis Polk, Byron E. Kabot, Arthur Cooke.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF H. L. REID

(PX-28)

[Tr. A-548] Q. Mr. Reid, will you state your full name and address, please?

A. My name is Hugh L. Reid, 212 Screven Street, Georgetown, South Carolina.

Q. Your employer, sir?

A. International Paper Company.

Q. Your position?

A. I am the plant General Manager, Container Division, Georgetown, South Carolina.

[Tr. A-550] Q. Mr. Reid, we are concerned with the period from January 1, 1955 to October 14, 1963, and we are concerned with the area defined in the complaint filed in this case as Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky. And referred to herein as the Southeastern United States. During the period under discussion, have you had pricing authority at the Georgetown plant?

A. Yes, I have.

Q. During this period, sir, have you at any time found yourself in the company of your competitors or representatives of your competitors at a time when prices were mentioned?

A. Certainly, the matter of prices, I would. Insofar as average trend line prices were discussed at Fibre Box Association meetings. If you are not familiar with those, I will be happy to tell you what I know of them. The industry [Tr. A-551] Association analyzed on a broad basis for certain standard type containers to indicate market trends.

In the course of Fibre Box meetings, these statistics were generally read by the Secretary and certainly there would be in a case of decided changes in price trends, a discussion that might indicate that prices were certainly not what should be justified by good volume or possibly they were improving. But these, of course, related only to broad averages reflecting areas called either zones or regions in the entire country. On those occasions, someone might make comments about prices.

Q. These occasions to which you refer were all formal FBA meetings?

A. That is correct, sir.

Q. For the record, will you repeat the phrase and define it? I understood it as average train line prices.

A. Trend, t-r-e-n-d.

Q. The comments and discussions you referred to took place during the formal FBA meetings?

A. This is correct.

Q. Did this occur throughout the period to which we have reference?

A. Yes, this has always been a part of the Association's standard meeting to present trends in prices.

Q. There was no mention of a specific customer at any [Tr. A-552] time?

A. There was not.

Q. Have there been any other occasions when you have found yourself in the presence of your competitors and prices of corrugated containers in the Southeastern United States were mentioned?

A. I don't recall a specific instance where that is the case.

[Tr. A-556] Q. Who would have told you that you were competitive?

A. The buyer would be the source of most of my information.

Q. Did you elect to use the Gaylord manual and to compute a price on the Gaylord manual as a general practice during the period 1958, 1959 and 1960?

A. Our practice consistently was to compute prices or suggested prices on the International Paper Company manual. I wouldn't say that we generally, insofar as the number of daily transactions that went on in my office, used the Gaylord manual.

Q. In making quotes to customers whom you were not then servicing would your answer still apply?

A. I think I would say again it was not generally used.

[Tr. A-559] FOR PLAINTIFF:

Q. Have you on occasion during the period from January 1, 1955, to October 14, 1963, requested a competitor to give you the price being charged a specific customer for corrugated containers in the Southeastern United States?

A. On some occasions, yes, I have asked my competitors to verify price information that would come in from the field. If in the instance I felt that it warranted our making the effort to meet a competitive price which the buyer had offered us a chance to meet, and I had reason to want to make certain it was a real price, I have called my competitors, yes.

Q. Were these occasions when you sought verification of a price which you had obtained from the field the only occasions on which you requested this information from competitors?

A. No. They were the majority of the instances, but not exclusively.

Q. What other occasions?

A. If I had a request from the field, that is our salesmen, to quote a price and the circumstances I felt justified our making an effort to obtain the business, then I might call a competitor and ask him for his last transaction.

[Tr. A-560] Q. Were these two situations the only occasions on which you made such requests?

A. Those are the only ones I am aware of.

Q. Was this continuous throughout the period from January 1, 1955, to October 14, 1963?

A. No, it was not. Approximately two years ago I was told that I was no longer to discuss a price with my competitors, either to give it or receive it, and I didn't continue the infrequent practice that it was beyond that.

Q. Do you have a date, sir, that indicates the cutoff?

A. I don't have. It was a verbal instruction, and I can't pinpoint the day.

Q. From whom did you receive the instructions?

A. I believe I received it from my superior, Mr. Agar.

Q. Did you inform any of your competitors of this change?

A. In those instances where someone might call me and ask me for information, I would tell them that I was no longer interested in offering the information, and that seemed to be a conclusion that they were willing to accept.

Q. Were there any other occasions on which you informed competitors of this change?

A. None other than by that method.

Q. During the period prior to this change and after January 1, 1955, have you given upon request by a competitor [Tr. A-561] the most recent price which you have charged a specific customer?

A. Yes, I have.

Q. Sir, what was your source of information upon these occasions?

A. My own files.

Q. And of what do those files consist?

A. Purchase orders. At one period quotations, estimates.

Q. Did you personally go to a file of purchase orders to obtain this information?

A. In some cases, yes.

Q. Do you keep a record, a summary record of any kind such as a card file?

A. A card file of what, sir?

Q. That would list a customer's name and the various transactions which have taken place between that customer and yourself?

A. We have what we call an original order file that carries copies of all the customers' orders.

Q. When you gave this information would it be the exact price appearing in your files?

A. Yes, it would.

Q. Have you on any occasion given false information to a competitor?

[Tr. A-562] A. No, not to my recollection.

Q. Is it your recollection that you received more requests than you made during this period?

A. There would not be a great deal of difference but I would think that I probably received more than I asked for.

Q. Do you spend most of your time at the plant?

A. Yes, sir, I spend the majority of my working time at the plant.

Q. When you were at the plant and prior to the change can you tell me to what degree of frequency you requested this information?

A. It would be difficult, very difficult to name a specific number. You would have to recognize that the pricing conditions were subject to change. For example, in the event of a change in the price of container board which would have the ramifications of market price changing throughout the entire territory. The frequency on the occasion of that would be quite different from when there was no pressure on price either upward or downward. But certainly I don't want to give you the impression that I spent my time trying to determine prices. I had many other things in operating the plant that I felt called on to do.

So, these occasions represented a small part of the working time that I put in.

[Tr. A-563] Q. Sir, during the periods when there was no pressure on price what price would you charge a customer whom you had been previously serving on a box which you had been previously supplying?

A. I would continue to charge the same price that I had charged on the last sale.

Q. Sir, when there is a change—I withdraw that question. How many changes have there been in the price of container board during the period to which we have reference?

A. I am not able to answer. There have been numerous changes but I don't believe I could count them up without referring to the record.

Q. On each of these occasions would the volume of calls increase?

"A." I would think that there certainly would be more calls on these occasions.

[Tr. A-564] Q. Mr. Reid, at the time there is a change in the price of liner board with approximately what frequency in terms of a day will you make or receive phone calls to or from competitors?

A. This again is certainly not any pattern with any regularity. If I were to hazard a guess I might say 10 or 12 calls a month rather than a day as you have asked me. Many days would pass and there would be no calls and there might be two or three on one day.

Q. Your answer is confined to a period immediately following an increase in the price of liner board. Is that right?

A. That is right.

Q. At times when there was no "pressure" on price what degree of frequency, approximately how many times a month would you make or receive these calls?

[Tr. A-565] A. Possibly only a few times a month, two or three.

Q. Did these calls during the time that you made or received them involve long distance calls?

A. Yes, sir.

Q. In each case where you placed the call you requested the last price which your competitor had charged a specific customer?

A. That is right.

Q. In each case when you received the call you gave the last price which you had charged a specific customer?

A. That is true. I will state that in the very early part of the period my interpretation of a past transaction had not been this case until I was instructed to the contrary. I had been of the opinion that a past transaction indicated a quotation that had been submitted and to all intents and purposes was a final offering. Possibly around 1958 I was instructed that the sale must represent the concluding factor of a past transaction.

Q. Do you recall, sir, under what circumstances you personally began making or receiving the calls?

A. No, sir.

Q. Do you recall how you obtained the impression that a submitted quote was a past transaction?

A. Over many years in the box business I had always felt that that was considered a proper interpretation.

[Tr. A-566] Q. At the time you personally gave a quoted price to a competitor where a sale had not been so consummated, did you in all cases have knowledge that that quote had been received by the customer?

A. No, sir.

Q. Have you, sir, on any occasion, furnished the price which you had charged a specific customer to a competitor without his having requested it?

A. Not to my recollection.

Q. Have you ever received a price from a competitor without having requested it?

A. I have received pricing manuals in our office that have not been requested.

Q. A price with reference to a specific customer?

A. I don't recall that.

Q. Having obtained the most recent price which a competitor had charged a specific customer from the competitor, what price would you quote in the majority of cases to that customer?

A. In the majority of cases when I felt that to name the same price that the customer was paying represented the highest price that I could obtain, yes, I would quote the same price that my competitor was charging.

Q. Sir, with reference to the Defendants listed on the [Tr. A-567] copy of the complaint which you have before you, as I read them, will you please give us the names of the individuals with those companies to whom you have given or from whom you have received the most recent price charged a specific customer, during the period from January 1, 1955 to October 14, 1963 in the Southeastern United States?

A. I would like to make this statement; that I have in numerous instances talked to my competitors regarding labor problems, production techniques, many other reasons, and I know many of these people, and to rely on a specific pricing

situation where I might have called them, I will give you the best answer that I can.

Q. Please, sir.

I am asking not merely for occasions when you have called them but for occasions also when they have called you.

Container Corporation of America.

A. W. G. Colvin and Dolph Clay.

Q. Sir, where you are unsure as to whether or not the conversation concerned price, will you please so state?

A. All right, sir. I would say on the latter name I was unsure.

Q. Albemarle Paper Manufacturing Company.

A. No, sir.

Q. Carolina Container Company?

A. No, sir.

[Tr. A-568] Q. Continental Can Company, Incorporated?

A. Robert Groner.

Q. Do you know Mr. Beams?

A. I know Mr. Beams. I am not sure that I ever discussed a price with him.

Q. Do you know Mr. Johnson?

A. Yes, sir.

Q. Is your answer the same for Mr. Johnson?

A. That is correct.

Mr. King: As for Mr. Beams?

Mr. Sliney: As for Mr. Beams, yes.

By Mr. Sliney:

Q. Crown Zellerbach Corporation?

A. Gordon Clark and I am not sure of any others.

Q. Dixie Container Corporation.

A. Herb Mitchell. That would be all.

Q. Inland Container Corporation.

A. Barney Roberts.

Q. The Mead Corporation?

A. Dave Bloom. I am not sure beyond that.

Q. Do you know Mr. Wainscott?

A. I do.

Q. What is your answer as to Mr. Wainscott?

A. I am not sure as to Mr. Wainscott.

Q. Miller Container Corporation?
[Tr. A-569] A. No, sir.

Q. Owens-Illinois Glass Company?

A. Ken Rosenbaum, Harold Frank. Those are all I know.

Q. St. Joe Paper Company?

A. No.

Q. St. Regis Paper Company.

A. Pete Petrie.

Q. Tri-State Container Corporation?

A. Alan McDonald.

Q. Union Bag-Camp Paper Corporation.

A. John Butler is deceased.

Q. Do you know Mr. Grimes?

A. Yes, I know Mr. Grimes.

Q. Your answer as to Mr. Grimes?

A. I am not sure.

Q. Do you know Mr. Faulkner?

A. Yes.

Q. Your answer as to Mr. Faulkner?

A. I am not sure but I could not be specific about a conversation with him.

Q. Do you know Mr. Pritchett?

A. Yes.

Q. Your answer as to Mr. Pritchett?

A. No, I am not sure.

Q. West Virginia Pulp and Paper Company?

[Tr. A-570] A. I am not sure of that.

Q. Your answer is, "I am not sure"?

A. I am not sure.

Q. Weyerhaeuser Company?

A. George Elliott.

Q. The Waterbury Corrugated Container Company?

A. No, sir.

Q. Sir, the Old Dominion Box Company is not listed but I would ask you the same question with regard to the Old Dominion Box Company.

A. I couldn't recall a specific case of talking to them about price.

Q. Sir, with reference to the Albemarle Paper Manufacturing Company, the Carolina Container Company, the Miller Container Corporation, the St. Joe Paper Company, I understood your answer to be, "no".

A. I was not sure.

Q. With reference to West Virginia Paper Company, I understood your answer to be, "no".

A. No, I am not sure that I have.

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[Tr. A-668]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Inland Container Corporation: Louis A. Highmark, McNeill Smith.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF FRANK TALBOT

(PX-33)

[Tr. A-670] Q. Mr. Talbot, with whom are you presently employed?

A. Inland Container Corporation.

Q. What is your present position, sir?

A. Vice President, Eastern Region Sales Manager.

Q. How long have you been in that particular position, Mr. Talbot?

A. About a year.

Q. What was your position before that?

A. Southern Region Sales Manager.

[Tr. A-671] Q. For approximately how long?

A. Approximately eight years.

Q. Now, before that time, were you also with Inland Container Corporation?

A. I was.

Q. In what capacity?

A. As sales manager.

Q. In what territory?

A. Of the Macon Plant.

Q. And for approximately how long?

A. 1946 to the change in job in 1955.

[Tr. A-672] Q. Now in connection with your pricing operations, Mr. Talbot, do you have responsibility for pricing within the area defined by you as the Eastern Region?

A. I have supervision over the pricing. However, I do not get into the day to day transactions.

Q. And within each of the three plants in this area, in the Southeastern United States, who has responsibility for pricing for each plant?

A. The Sales Manager.

[Tr. A-673] Q. Mr. Talbot, in arriving at the price to be quoted to a prospective customer for a container, did your sales managers during the period 1955 to October 1963 at times contact representatives of competitors in connection with [Tr. A-674] price information?

A. If you mean that they requested price information from competitors of past transactions, yes.

Q. Was that done during that entire period?

A. Yes. It was done for a long time in this industry.

Q. Now were these contacts made by your sales managers, your plant sales managers?

A. Right.

Q. Did you at any time make the contacts, yourself?

A. Very infrequently.

Q. Would you tell us, please, under what circumstances you would personally contact your competitors?

A. It would usually be done in the absence of the sales manager on a sales trip, and I would take the requests in lieu of the sales manager.

Q. Now, Mr. Talbot, in these, what I have termed, contacts, did this include the giving of price information on jobs for specific customers and the receiving of that type of information?

A. Not necessarily. I may have requested the information from the competitor, but at that time did not have any reason to request information of him.

Q. I am not sure I understood your answer. Let me ask you this. Did you request information from your competitors concerning prices on specific jobs, jobs for [Tr. A-675] specific customers?

A. At the time that I requested information?

Q. No, I am just asking, did you during the period 1955 to 1963, at times personally request price information from your competitors on specific jobs.

A. Very infrequently, only at times when I was acting for the sales manager.

Q. Now, did you at times give this type of information in response to requests from your competitors?

A. If there was any urgency, I would give the information. If not, I would take the information that they were requesting and refer it to the sales manager on his return.

Q. Now would it be your testimony that such giving of information concerning specific jobs and receiving of such information was normally done by sales managers rather than yourself?

A. I would, yes.

Q. Now, on those occasions when you personally either gave or received specific information on jobs, how did you obtain the information requested?

A. I would call for the file on that particular customer that the competitor requested information on and obtain the information from our file.

Q. Were the files kept in your headquarters or did [Tr. A-676] that necessitate contacting your plant?

Q. If it was at Macon, I had the information in the general offices of our Macon plant. If it was the outlying plant, of course I would place the call to the sales manager—if not to the sales manager who was absent, to his assistant.

Q. Will you tell us, please, what information you had in your files?

A. We would have the past transactions, the order, on each estimate we make up for pricing we have a record of the price that the order was manufactured at.

Q. Now, when you were requested by a competitor for information, did—Strike.

When you were requested for information by a competitor, exactly what information did he seek?

A. The competitor would ask what our past market was, what we had sold boxes for.

Q. When you supplied this information, did you give him your most recent price?

A. Yes.

Q. Was that in all cases accurate information as revealed by your own files?

A. Yes, we always gave accurate information.

Q. Did this at times involve long-distance telephone calls to give out this information?

A. Yes.

[Tr. A-677] Q. And did it, at times, involve your making calls to plants other than the Macon plant to obtain the information?

A. Yes.

Q. Now, Mr. Talbot, was this information given at times in terms of board level as distinguished from end prices?

A. No. In instances that I handled I would usually give the end price.

Q. Do you know whether or not your sales managers at times gave board level as distinguished from end prices?

A. Well, I think we would have to define what we mean by the term board level. We have our manual where we arrived at the end prices, the objective prices. Then in view of competition or conditions in the market that price is discounted. It might be discounted five percent or ten percent or more. So it would be very difficult to give a board level because it would not mean what the end price would be. The price is determined by the competition. Certainly it has been very fierce in this area.

Q. Within your own district would you state that during this period 1955 to or through 1963 this information was normally given in end prices, that is, overall prices?

A. You mean the end price that the box is being sold for?

Q. Yes.

[Tr. A-678] A. Yes, in most instances.

Q. Going back, Mr. Talbot, to the years when the Gaylord manual, the National Container manual and the Old Dominion manual are—were in use in your plants, was this information as to prices on specific jobs given out in terms of board level at that time?

A. No. There is such a variation in our pricing in the area that it would be very difficult to say you were using a board level. You have to give the account in the end price or with the discount off, you don't know what you are going to use.

Q. Would you explain what you mean by the term "discount off"?

A. Well, you take the customers' specifications and you develop your objective price. Then you determine all the

facts available, what the market is, then you might discount that 10 percent or 20 percent or 30 percent from that objective price.

Q. When you were requested for information as to the price you had last quoted or sold to a specific customer by a competitor, exactly what information would you give him?

A. The price that he requested if it was a past transaction.

Q. You would give him an end price or overall price?

A. No, an end price, what we consider charging for the [Tr. A-679] containers.

Q. Now were there ever now any—now was any information ever requested concerning factors which go into the end price?

A. I think in a general discussion where the end price was given that you could conceivably use the factor that was used to make up that end price and then of course after you arrived at the end price and you discounted it, you could give the man how you arrived, what board factor you used.

Q. Would there at times be any information given concerning set up charges or other charges which would go into the end price?

A. Conceivably there could be, depending on the style of box and the set up that is involved. There are several different set ups. By that I mean, determined by the style of the box or the competitive situation in that market. You might use one set up or you might use another set up. Or if you want to leave the set up to cut the price you might do that so there could conceivably be discussions on what set up was used because our set up is pro rated over the order or the number of containers that the customer orders. I would like to add that sometimes our customers request prices on 500, 1,000 or 2,000. So, to arrive at an in between price it would be necessary to know what set up was used.

[Tr. A-680] Q. Now, Mr. Talbot, I would like to refer again to the complaint in this action and go through the list of defendants again and request that you tell me what persons you can recall as having either given to or received from price information on specific customers.

Is that clear?

A. If you are referring to a past market transaction?

Q. I am referring to what you have termed past market and which you also stated was the giving or receiving of the most recent price. Is that right?

[Tr. A-681] A. That is right.

[Tr. A-683] Q. Mr. Talbot, I would like to go through the list of the defendants once again and clarify for you what may have been a misunderstanding. In connection with each defendant as I name them I would like to know those persons to whom you have given price information on specific jobs, on jobs [Tr. A-684] for specific customers or from whom you have received such information. I am not interested in contacts other than within that category. Is that clear?

A. It is clear now.

Q. Container Corporation of America?

A. Mr. Colvin.

Q. Albemarle Paper Manufacturing Company?

A. No contact.

Q. Carolina Container Company?

A. C. T. Ingram.

Q. Continental Can Company?

A. Mr. Groner.

Q. Crown Zellerbach Corporation?

A. Mr. Tarantino.

Q. Dixie Container Corporation?

A. No contact.

Q. Dixie Container Corporation of North Carolina?

A. No contact.

Q. International Paper Company?

A. No contact.

Q. The Mead Corporation?

A. Mr. Shutze.

Q. Miller Container Corporation?

A. No contact.

Q. Owens-Illinois Glass Company?

[Tr. A-685] A. Mr. McRae.

Q. St. Joe Paper Company?

A. Mr. Wayne Ashley.

Q. St. Regis Paper Company?

A. No contact.

Q. Tri-State Container Corporation?

A. Alan McDonald.

Q. Union Bag-Camp Paper Corporation?

A. Mr. Pritchett and Mr. Wulff.

Q. West Virginia Pulp & Paper Company?

A. No contact.

Q. Weyerhaeuser Company?

A. Mr. Elliott.

Q. The Waterbury Corrugated Container Company?

A. No contact.

[Tr. A-686] Q. Now, Mr. Talbot, in your previous testimony, mention was made of the term, "objective price". I wonder if you would tell us what you mean by objective price?

A. Prices were very low at the time our company issued our present manual. We felt that it was necessary to have an objective price and to publish it to the trade and to the world that this is what we would like to sell of our boxes for. We certainly would like to sell all of our boxes for what we published, the \$13 objective. Of course, competition won't permit us to do that, so we have to take what we can get. But that was the objective price and we thought it was time that we state a policy that this is what we will sell our boxes for to anyone.

FOR DEFENDANTS:

Q. What was the situation before that time?

A. Well, there had been other succeeding manuals. I am not too familiar with them because I don't get into day-to-day use of them.

We felt that with the deterioration in prices that as a company we must make our own determination of price and this was the price that we were willing to sell our boxes for. So, we came out with a policy that would enable us to have this objective by this method of pricing.

[Tr. A-687] Q. Was this objective price communicated to your customers?

A. Yes, it was.

Q. How?

A. By delivering the manual and discussing the price situation with our customers.

Q. Was the objective price concept communicated to your competitors?

A. I do not know. That was handled by our general offices and I am sure that if they wanted a copy of our policy or our objective price manual, that they could write and get it from our general offices.

Q. Mr. Talbot, in connection with the issuance of the Inland Manual, what part, if any, did you have in connection with that issuance?

A. I had nothing to do with the mechanics of issuing the manual.

* * * *

Q. At the time of its issuance, were you given any specific instructions from your headquarters as to how it should be used?

A. We were given the instructions that we would try to obtain this objective level in the pricing of our containers but that it would be necessary to get all of the facts together so that we could make an intelligent price.

[Tr. A-688] Q. Mr. Talbot, earlier in your testimony in response to my question about your use of other manuals, I believe you used the term in response to my direct question as to when you used the other manuals, that it depends on competition. Is that correct? Do you recall that?

A. Yes, I recall that.

Q. I wonder if you would explain that term.

A. If we were quoting an account and our sales manager determined that our competition was a company that had published a manual, of course we would probably quote on the business using their manual.

* * * *

Q. How did you find out, Mr. Talbot, which manual was being used by a specific competitor?

A. I would assume that the sales managers could get that information fed back to them through the package engi-

neers who would be calling on these particular accounts. We ask our man to get all of the information he can from the buyer, as to who is supplying them, or any other pertinent information that we need to determine what we would quote this account. In many instances, the buyer would say, well, I am buying from XYZ company. And that, of course, if XYZ [Tr. A-689] company had a published manual, we would not hope to get any more than they have published as their objective and if we can determine any other information we might even cut the price.

Q. How would you find out which manual was being used by a company which did not publish its own manual?

A. We just wouldn't have that information.

Q. How would you know which manual to use then?

A. Then we would have to get other information, but no matter how we got this information, we still would have the problem of determining what we are going to quote, whether it came from our competitors or whether we got it from the buyer. And we take these facts to determine what our price will be to that particular account.

So, if we didn't get this information, and we didn't know, or this company we were competing with had no manual, then we would have to get the facts elsewhere.

• • • • •
FOR PLAINTIFF:

Q. Now, this board decimal is listed as a part of the manual, is it not?

A. Yes, that is the objective.

Q. Does that change when the manual is revised?

A. That factor is changed when the raw material market changes,

[Tr. A-690] Q. Does the board decimal include your profit or markup?

A. I can't give you that breakdown entirely, but it includes some overhead and profit.

Q. Does it include your delivery cost, either freight or trucking delivery?

A. Different companies handle that differently. We include it in our factor.

• • • • •

Q. If you went to your file on a particular customer, you could tell quite easily exactly the current price that you had quoted in your last transaction with them, is that true?

A. That would in the quotation file which would be separate from our actual estimate file. There are two files. One is where we make mathematical computations. The other is a typed quotation that goes to the customer.

Q. I would like you to tell us which you used when you were requested or when you received a request for information concerning a specific customer?

A. Obviously I would take the mathematical computation file, because on that is recorded the date the order is received and the price. So that would be what I would refer to. It would be a past market transaction.

Q. That would give you your most recent price?

[Tr. A-691] A. That is correct, that the box had been sold to the customer for.

Q. In connection with occasions where you received a request from a competitor for price information on a specific job, would you furnish this information if you had quoted on the business but may not have gotten the order for some reason or other?

A. I don't think I personally would be faced with that situation. After reviewing the file, if we had not sold the boxes—in other words, I feel that a past transaction is when we have the order, either written or verbal in a responsible person's hand in our organization, that that is a transaction.

Q. What I was asking, if you had made a quote, not just quoted it for your own purposes, but actually made a quote, would you give that information?

A. There would probably be some instances where we were sharing an account with four or five other people, and if the buyer had indicated that we on our quotation would be given our part of the business which, say, we have enjoyed with six other people, and it was lower than we had quoted last time, and a competitor called me, and he was a normal supplier of this account, I might give him that information because he would be, of course, checking to see what the market was.

[Tr. A-692] But that would be a very rare instance, and only where we were a contract account or an account where

there are four others who share the same position, of which you have many like that.

Q. Realizing that possibly you, yourself, would get few of those, what were your instructions to your sales managers in reference to giving information on specific jobs where you had quoted but had not made a sale?

A. I don't believe we have any set rule. It would have to be discussed, and a determination made what information was requested, to be sure that we were not giving a price that was not a fact and that we had been told that maybe the order had not been placed, but if we would maintain this price we would get our share of the business. There is no commitment there.

* * * * *

[Tr. A-693] Q. Mr. Talbot, in connection with the giving of price information on specific jobs to representatives of your competitors, could you tell us, please, in what way, if any, such giving of information benefited your company?

A. The specific duties of our sales managers, of course, are to sell our products at the highest prices they can obtain to make a profit. They need information to make an intelligent decision on price.

I would say whether we got the information from our competitors or the buyer or any other source, it would still be used in the same way to determine the price that we would quote for our boxes. I would say it would be only the help in getting the information faster than we could seek it out by making repetitive calls on the buyer or through other channels.

Q. What other channels would be available to you or were available to you?

A. I used that word very broadly. It probably would be none other than the buyer or relating a market to another market within an industry. I think I used the word too broadly.

[Tr. A-573]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Inland Container Corporation: Louis A. Highmark, McNeill Smith.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF BARNELL E. ROBERTS

(PX-29)

[Tr. A-574] Q. Mr. Roberts, would you state, please, your full name, residence address, and business address?

A. B. E. Roberts, 1236 South Jackson Spring Road, Macon, Georgia, and the Inland Container Corporation in Macon, Georgia.

Q. Sir, what is your position with the Inland Container Corporation?

A. Plant Sales Manager.

Q. Would you trace for us the history of your employment with Inland, positions and dates, please?

A. I have been employed by Inland Container for thirty-two years, tracing from present time backwards, I became Plant Sales Manager in Macon in 1955.

[Tr. A-579] Q. Sir, at the time of these, either before or after a Fibre Box Association meeting, have you talked with a representative of a competitor about the corrugated container industry in the Southeastern United States with reference to anything other than what you have referred to as past market information on a specific customer?

A. Yes, as a sales manager, plant sales manager, I would have to keep myself abreast with what is going on in [Tr. A-580] the industry, both from the statistics which are put out by the Fibre Box Association, at the same time ask questions as to any new plants coming into the area, new equipment, and so forth. General information to try to keep

myself abreast with what is going on in the industry, as a whole.

Q. Have you been asked for information with respect to a specific customer on these occasions?

Mr. Highmark: What kind of information?

The Witness: Will you re-state it, please?

By Mr. Sliney:

Q. Have you been asked for information with respect to a specific customer on these occasions?

A. Yes. They would ask me about the general information. If this particular account was buying—again I am thinking now of our customer—if he was buying out another operation, whether they were going to shut that particular mill down, and so forth.

Q. Have you been asked questions with regard to price of a specific customer?

A. Yes, in the same manner that I request it from a competitor.

Q. Sir, you have referred to this as being the same sort of information that you would request on the telephone. Would you describe for us the type of information that you have in mind?

[Tr. A-581] A. Generally speaking, the information that we need to sell an account comes from the buyer. The package engineer reports the market condition in a particular account. If we can't secure it from that source, and I have to have the information in order to make an intelligent decision as to what I am going to do price-wise, I have to have this type of market information.

So, subsequently if we can't get it from the buyer or, as I say, from any other source—on the other hand, we have a source when we try to think of an overall market condition so far as the market price which the Fibre Box index might represent, I would then call a competitor and ask him what is his past market.

Q. Sir, when you say market conditions, what do you mean?

A. Market conditions, you put that in the same category

as an overall index or an average of what the business in any given area is going for?

Q. I am asking you, sir, to define your use of the term.

A. Yes. For example, if you take all the accounts and throw them into a hat and total up the dollars and footage in it, you have an "X" per M square feet figure.

If you wish, you can use that, well, we might in some instances use that as a market to quote, without seeking out [Tr. A-582] information.

Q. Is this the type of information that you ask a competitor for or which he asks you for?

A. This is the type of information which is readily available from the Fibre Box statistics which we receive at our regular Fibre Box meetings.

Q. My previous question, sir, had reference to the information which you requested or which was requested of you by a competitor or with reference to a competitor and with reference to a specific account.

A. Well, the type of information that we would request would be no different than the type of information that we would receive from the buyer and would have no direct bearing on what we would quote.

Q. Sir, can you describe this type of information? Can you tell me what this type of information is?

A. I would ask a competitor, perhaps he would ask me, as to what our past market is on a certain specification, or for a certain customer.

Q. When you say past market, will you define that for me, please?

A. Past market is where a previous sale had been made.

Q. To a specific customer?

A. That is right.

Q. By the competitor from whom you requested this [Tr. A-583] information?

A. That is right.

Q. Was this the most recent past sale to which you had reference?

A. It would be the most recent past sale, yes.

Q. Was it a sale in all instances, to your knowledge?

A. The information I requested has always been on a past transaction basis.

Q. Did you define the term "past market" for the person of whom you were requesting information?

A. I would ask him to give me the past market or latest transaction he had for that particular account. The reason I was asking that is because I knew he was selling that particular account. That was the purpose of my calling, because I knew through my packaging engineer that he was selling the account.

[Tr. A-584] Q. Sir, did you mean to say "or"? "Past market or latest transaction"?

A. I was probably using the term loosely. When I say "past market", I am thinking of the latest transaction or the latest sale.

Q. Did you define your use of the term in that way to a competitor when you called him?

A. No, I think in some instances—this again depends on the terminology—I would say past market, and past market, as far as I am concerned, is the latest sale, the price of the last sale the competitor made.

Q. Do you have any knowledge of what the term meant to the person you were calling?

A. Since he was seeking out the same information from me on other occasions, other items, other customers, I am assuming he had the same interpretation, because that is the type information I was giving him.

Q. Sir, with reference to requesting or giving this price information on the telephone, under what circumstances would you request this information?

A. Well, again, it is the same type of information that [Tr. A-585] we normally receive from the buyer and if we were unable to secure the information from the buyer through the packaging engineer and needed the information to make an intelligent price decision, knowing that the buyer is not going to pay me any more than competition, and I certainly would be a poor sales manager if I could not get at least as much, I would in turn seek out the information or make my own independent price.

Q. Would it be on occasions when you were unable to obtain a figure from the buyer?

A. Yes.

Q. Has it taken place on occasions when you have been able to obtain a figure from the buyer?

A. There would really be no need for me to request information if I had received it from the buyer. Again stating that in many instances our package engineers are allowed to negotiate across the desk with the buyer. Once they receive price information, they can negotiate their own price, and they will tell me what they have done.

Q. Sir, have you ever during this period to which we have reference, attempted to verify the price which a customer had supplied to you or to one of your package engineers?

A. I would say in some cases, yes, where a buyer has indicated that the price has been reduced by another supplier [Tr. A-586] and we have possibly a contract with the customer and the prices being as low as they have been in this market for years, we certainly don't want to reduce our market any lower than what it has already been reduced to. We would call and verify with the competitor that there had been some reduction in the market, assuming that he had already received business at this lower reduced price.

Q. You would make that assumption at the time you made the call?

A. Yes, because, again, we are seeking out information that I would have to have in order to make this decision. A lot of times the buyer, certainly I don't believe you can take the word of all buyers.

Q. Did you have any knowledge on these occasions whether or not your competitor had received an order?

A. Definitely whether they had received an order or not but there was indication from the buyer he intended to give me business if we would make the adjustment.

Q. Sir, did this happen only on occasions when you had a contract with the customer?

A. There might be other instances, yes.

Q. What other instances, sir?

A. I would say a particular type of account where there would be five or six suppliers. If they decided they wanted to get more volume they might reduce their price.

[Tr. A-587] Q. On these occasions you would learn from the buyer?

A. We would learn from the buyer, yes, that there was some price agitation going on, that the market had been reduced, and he was more or less obligated to give the other fellow some business because he had reduced his price.

Q. Have you ever learned from a competitor, without requesting information, that he had reduced the price?

A. No, sir.

Q. Have you ever learned from a competitor without requesting the information that he had increased a price in a specific account?

A. Yes. Again we would seek out this information. One certainly did as much as we could for our product and we would seek out the same type of information on that side as on the other side.

Q. Not having sought the information, sir, has a competitor called you or stopped you at a meeting at the time, on any occasion when you might meet him personally, to tell you that he had increased the price to a specific account?

A. Not to my recollection, no.

Q. Have you ever done this, sir?

A. No, sir.

Q. Sir, on the occasions when the buyer informed you that his price had been reduced have you ever asked a competitor whether or not he had reduced the price?

[Tr. A-588] A. Again, I would seek out the information on a past transaction. Again, I say that in many instances we automatically through the package engineer—cause the customer to negotiate the price then and there. In other cases we would seek out and verify the information from the competitor.

Q. In some instances the package engineer would negotiate a price where there had been a reduction in the price to that account?

A. That is right. It depends entirely—I would say not entirely but in many instances on the type buyer and the type of reliability of information given by the buyer.

Q. The package engineer would make the judgment as to whether the information was reliable?

A. That is right.

Q. Sir, on the occasions when a competitor has requested information from you regarding your most recent price to a specific customer, where would you obtain the information to answer the request?

A. I would go, either myself personally or have someone from the office go to pick up the files, what the latest transaction indicates.

Q. Would you describe the order file for me, sir?

A. The order file has in it the customer's order or confirmation of the order sent in by the customer. It would [Tr. A-589] have our Inland cost sheet attached and also the computations on the manual with the latest transaction so indicated and other transactions prior to that so indicated.

Q. Is each of these items which you mentioned a separate piece of paper?

A. The order, itself, would be, yes. The Inland cost sheet would be separate and the Inland manual sheet computations would be a separate piece of paper.

Q. Is that for each order received from that customer?

A. That is right.

Q. Does this file contain several pieces of paper with reference to previous orders?

A. On any given specification, we would have only one card and on that card would be listed the transaction from the latest up to maybe several years on the one card index.

Q. Is this card contained in this file?

A. Yes, it is attached right there with it—in our active file.

Q. To which do you refer, sir, in attempting to ascertain the information necessary to answer your competitor's request?

A. We look at the Inland cost sheet where we make our entry with the assigned plant order number, the date received, and the price, sir.

Q. Is this Inland cost sheet only prepared with [Tr. A-590] reference to actual orders or is it also prepared with reference to quotations?

A. It is done both ways.

If an order gets extremely low we like to know exactly

what our costs are, so we are going to cost sheet even though we get no actual business on it.

Q. When you refer to this cost sheet, sir, have you any way of knowing whether a sale has been completed with reference to that particular sheet?

A. Yes. The entry is made. We make no entry on the Inland sheet until such time as a sale has been made when we assign a customer plant order to that particular transaction.

Q. No entry is made on this cost sheet at the time a quote is prepared?

A. We have a quotation ~~we~~ where we send out quotations to the customer. That is kept in a separate file. That is on a regular quotation form listing the customers specification and so forth.

Q. And you do not have reference to that file at the time you attempt to answer a competitor's request?

A. No. If he is asking for past market we pull out the active file where we have sold an account.

Q. Have you ever been asked during this period, sir, by a competitor for a quotation or what you had quoted?

[Tr. A-591] A. No—my knowledge of what we had quoted, no.

Q. Sir, having received a request of this type and having obtained the information from your files, do you make any notation on your files?

A. How do you mean, notation?

A. Do you in any way, change the files after you have received a request from a competitor?

A. I might make a notation indicating that he had called to keep abreast of who is active in the account and who was after some of my business.

Q. Where would this notation be made, sir?

A. It would be made right on the estimate, itself, the cost sheet.

Q. Is this your general practice, sir?

A. No, it is not general. I say in some instances, we might do that.

Q. In what instances would you do that, sir?

A. Well, I would say where there might be some unusual agitation in a certain account, pricewise, where the price is continually deteriorating.

Q. Sir, to whom is the information in this order file available? To whom within your organization?

A. It is available to anyone in the sales office. They have to use the information every day in their re-orders. We receive many orders where there is no particular pricing [Tr. A-592] problem. The order comes in and we put the same price as last on it. So, there is really no problem. They still have to have the files to go ahead and enter the order and put on the Inland base on our order form.

Q. Does this order file have any other use to the sales department?

A. I don't know how you mean, any other use. We use the files—could you clarify the question?

Q. Yes. You have stated that it is used to answer a competitor's request for information.

A. Yes.

Q. And it is used to price an order which would be received and on which you had used the same price as you had been using previously; is that correct?

A. Yes.

Q. Other than these two uses, is there any other use to which you personally put the file?

A. Yes. If we are anticipating a contract with the customer, we might pull out the file to see which items we have sold to order our special materials or regular materials or even special materials. When you get into your off-whites and special types and so forth, you have to refer to your file to make a projection.

Q. Is this information in your file made available to anyone other than yourself, sales people and your competitors? [Tr. A-593] A. You say, made available. My files are not made available to the competition.

Q. Do you give information contained in this file to anyone other than yourself, your salesmen, or your competitors?

A. Yes, on occasion, I have to discuss a certain selling price with our production people.

Q. Is there anyone else, sir?

A. My superiors, yes.

Q. Is there anyone else?

A. Not that I can think of.

Q. On the occasions when a competitor requests informa-

tion of you, what purpose do you have in supplying him with this information?

A. Well, it is the same type of information I have to have in order to make an intelligent decision. I am assuming he has to have the same type of information to make his decision. I feel unless I give him the information that I certainly won't be able to request it from him.

Q. Is your giving this information, then, of any benefit to you?

A. The benefit as such makes no difference whether you get it from the competitor or whether you get it from the buyer. You use it in the same manner.

Q. Is it of any benefit to you to give this information [Tr. A-594] to your competitor?

Mr. Smith: I object. That is the same question.

Mr. Sliney: I don't believe he has answered my question.

The Witness: I don't know of what benefit it is to the buyer—to the competitor, but if he requests information and I give it to him, I, again, assume he has to have it the same as I do in order to make an intelligent decision.

By Mr. Sliney:

Q. I am not making myself clear and I think that is the reason for the misunderstanding. On the occasions when a competitor requests this information and you give it to him, what benefit do you derive from having given him this information?

A. I, in turn, can ask him for past market information at a later date, possibly, on some particular account that I might need information on.

Q. Sir on the occasions when you have need for this information and where you have called a competitor, have you always obtained this information from a competitor? Again, I have reference to the period from January 1, 1955 to October 14, 1963, as I have had throughout this examination.

A. I would say in some instances in calling a competitor that I would get no response because they had not [Tr. A-595] sold the account and they had no particular past transaction.

Q. In the event he had sold the account, sir, have you always obtained the information?

A. I would say in most instances.

Q. Are you able to use this information, sir, in computing the price of a corrugated container?

A. Yes. In some instances the information that I request, I might request an end price on which I will make a decision after reviewing all the pertinent information, as to product mix and how the plant is operating, and overtime and so forth, as to exactly what I will do with the price.

Q. Sir, how do you ask for an end price?

A. I will ask him what his past market is and ask him exactly what he has been selling the account for. In some cases he might say a level and again he might say an end price. But if I am looking for an end price on the basis that there are only several sizes involved, it saves my office estimator valuable time, there are only several sizes I can ask for an end price. But if it is a complicated specification, generally it is received in the form of a level.

Q. If there are complicated specifications?

A. Complicated and page after page of it, you certainly are not going to stay on the phone and find out what the end prices are on four or five separate pages of specifications.

Q. Having received the level, sir, are you able to [Tr. A-596] use this information in computing the price of a corrugated container which you wish to compute for a customer, for that specific customer?

A. Yes. Once I receive a level, I can compute it on our manual and determine what price will be developed off the manual and then make the decision as to whether or not we should endeavor to secure the business, knowing that many times the sales manager wants to get the best price he possibly can and in the majority of cases we will quote the same price given us, hoping that we can sell at that particular level.

Again, if you want to cut a price, you want to cut it and at the same time be able to get the business after you cut it, because just because you cut a price does not mean you are going to get it.

Q. Would you elaborate on that, sir?

A. Yes, to the extent that we have quite a few accounts,

again, I mentioned previously that our package engineers negotiate across the desk with the buyer, and we do have customers that will give us information the competition has put in a lower price, or what they have put in, and we can negotiate right then and there and feel that the competition has the same type of account.

Again I say, even though I would cut the account does not necessarily mean I would get the business, because I feel [Tr. A-597] the buyer would give that same type of information to the competitor.

Q. Sir, will you explain what you mean when you say end price?

A. The end price is what an item or specification brought at the last sale, the last transaction.

Q. Does it have reference to a specific type of box?

A. That depends on the specification that I was seeking out information on.

Q. When you say end price, sir, you are talking about the price for one particular box of certain specification?

A. That is right.

Q. Having obtained an end price, have you ever, during [Tr. A-598] this period to which we have reference, computed a price of another box of different specification for this same customer?

A. Yes, I would attempt to determine what other specifications should be off that one or two or three other end prices I might receive from a competitor.

Q. How would that be done, sir?

A. It would be done, as a rule on an overall basis, determine the footage in the item and divided into the price per thousand then arriving at so much per thousand square feet for the item, and then figure the other specification, how much footage was in that particular item and use that same overall figure.

Q. Would this require the use of a manual, sir?

A. No.

Q. It could be done without a manual?

A. Yes.

Q. Mr. Roberts, with reference to the Container Corporation of America with what persons, with what representatives of the Container Corporation or from what persons representing the Container Corporation have you requested information regarding the most recent price of a specific competitor?

A. It would be Bill Colvin, J. D. Evans, and Dolph Clay, Norman Alday. That is all I can think of.

[Tr. A-599] Q. Have you also received requests for this information from each of these persons?

A. Yes.

Q. Is there anyone else from whom you have received information?

A. No one else.

Q. Sir, with reference to the Albemarle Paper Manufacturing Company, the same question?

A. With Tony Bagley on a limited basis because of the fact we don't get up into that area too much.

Q. And you have received information from him?

A. Yes.

Q. He has requested information from you?

A. I have requested and he has requested information.

Q. Is there anyone else with Albemarle?

A. Not to my recollection, no.

Q. And the Carolina Container Company?

A. C. T. Ingram, Jr., and Carter Holbrook.

Q. Both ways, you have requested and they have requested?

A. Yes.

Q. Continental Can Company, Inc.?

A. Roy Taylor, Bob Groner, and previously Bill Beams before he became associated with this new plant in Martinsville.

[Tr. A-600] Q. Southeast?

A. Yes, I think he has changed jobs from Continental.

Q. At the time he was with Continental?

A. Yes.

Q. And again with Mr. Taylor, Mr. Groner, and Mr. Beams you have both requested information of them and they have requested information of you?

A. Yes.

Q. Was there anyone else of Continental Can?

A. Not to my recollection, no.

Q. Crown Zellerbach?

A. Lee Ross, George King, Gordon Clark.

Q. You both requested information and gave them?

A. And gave information. Yes.

Q. With each of these people?

A. Yes..

Q. Dixie Container Corporation?

A. Herb Mitchell, again on a limited basis of not getting up too much into the State of Virginia.

Q. Where are they located, in Richmond?

A. In Richmond, yes.

Q. Is there anyone else with that company, sir?

A. No one else I can recall.

Q. And again both ways?

A. Yes, sir.

[Tr. A-601] Q. With reference to the rest of these people as we go through the list, is there any from whom you have only requested or who have only requested information from you, would you point them out?

A. Yes.

Q. Do you know Dixie Container Corporation of North Carolina?

A. I know they exist, yes. We don't again, run into their particular operations because we don't get over into that part of North Carolina too much.

Q. Do you know Mr. Schwind?

A. I have heard of him. I might have met him in the past but I don't recall the occasion.

Q. You wouldn't include him in this list?

A. No.

Q. International Paper Company?

A. Hugh Reid and Spike Ennis. Those are all.

Q. The Mead Corporation?

A. Dave Bloom, Virgil Shutze, and Bobby Wainscott.

Q. Miller Container Corporation?

A. Harold Kyle.

Again that would be on a limited basis because here they are in Virginia which we don't get into much.

Q. Do you know Bill Noftsinger?

A. I have met him, yes.

[Tr. A-602] Q. Would you include him on this list?

A. No.

Q. Owens-Illinois Glass Company?

A. Tom Cox, Hays McRae, Ken Rosenbaum. And Britain. Harold Franks.

Q. Is there anyone else?

A. Those are all I can think of.

Q. St. Joe Paper Company?

A. Jake Belin, Wayne Ashley. That is all I can think of.

Q. With reference to St. Joe these like the others have been both ways?

A. Yes.

Q. St. Regis Paper Company?

A. Bill Diggs, Petrie, and Sid Marks.

Q. Do you know Mr. Duffy or Mr. Robinson?

A. I have met them but I never corresponded with them at all.

Q. Where is Mr. Marks located?

A. In Atlanta.

Q. Tri-State Container Corporation?

A. Alan McDonald.

Q. Union Bag-Camp Paper?

A. John Pritchett, Frank Grimes, and Ed Faulkner.

Q. West Virginia Pulp and Paper Company?

[Tr. A-603] A. Alan Holt. That is all.

Q. Weyerhaeuser Company?

A. George Elliott, Ed Grain and—

Q. Do you know Ivan Wood, sir?

A. Yes.

Q. Would he be added to this list?

A. I don't recall—I have talked to him but I don't know whether it was when he was with Weyerhaeuser or whether it was when he was with Old Dominion.

Q. The Waterbury Corrugated Container Company?

A. Very limited, Joe Reynolds, again because he is over in that particular area that we don't get into too much.

Q. Sir, with the exception of Weyerhaeuser whom you just mentioned, has the exchange been continuous throughout this period, from January 1, 1955 to October 14, 1963 with reference to the rest of these?

A. Yes, on a limited basis.

Q. Have you found you have been unable to obtain information from some of these people at any time during this period?

A. Yes. I think certain companies are not on the phone

at the present time and subsequently, you don't get information from them.

Q. Which companies are those?

A. Container Corporation, Mead and International Paper.

[Tr. A-604] Q. During this period that you have been sales manager, from the fall of 1955 to October 14, 1963, have there been any new box plants that have entered the area in which you solicited business?

A. From 1955?

Q. Yes.

A. Yes, there have been several. We have the Blue Ridge, Waterbury as you call it, and the International Paper at Statesville, I think it is, and the Southeast in Martinsville, Union Bag in Atlanta, Union Bag in Spartanburg. I believe they came in after 1955.

Q. All of these have come in after 1955?

A. Yes.

Q. When one of these new plants comes into the market, does it have any effect on what you have described as general market conditions?

A. Yes, I think they have a detrimental effect to the point that prices to a certain extent have a tendency to deteriorate. They certainly are going to operate their plant and it seems like other times we don't know how they get business but they operate.

Q. This deterioration that takes place, is it a temporary thing or is it permanent?

A. When you say temporary, I think it is an ever-
[Tr. A-605] continuing thing. When you have another plant coming in on top of the other plants, it is a never-ending thing so far as price competition.

Q. About the time that the effect of one new plant has worn off another new plant opens up?

A. That is the way it has been, yes.

Q. Is there any one of these that has caused particular trouble to your operation?

A. I don't think you could say any one. I think they all have a deteriorating type factor on the market.

Q. Do you recall the period when the Union Bag plant opened up in Spartanburg?

A. You mean do I recall the year?

Q. Approximately. Well, do you recall the occasion, the time, do you recall anything about that plant opening up?

A. I just remember when they came into operation, yes. Again, I say I think it is after 1955.

Q. Do you know the individual who was in charge of sales in Spartanburg?

A. Yes, Frank Grimes.

Q. At the time that that plant went into operation in Spartanburg, did Mr. Grimes seek information from you with regard to your most recent past price to a specific customer?

A. Yes.

Q. Did you give him this information?

[Tr. A-606] A. Yes.

Q. What was your experience after giving him this information?

A. I don't know as far as the experience is concerned, other than any other type of experience, giving him the information he requested.

Q. Did he request this information from you on more than one occasion?

A. Yes.

Q. Did you find that he was cutting your prices after you gave him this information?

A. I don't think any more than anybody else because we are in a competitive market and I don't think we would notice it in particular because, again, the territory we operate in is rather large so that I would not be able to associate him more so than any other particular plant.

Q. When you say, not any more than any other, sir, do you mean that he cut your prices all the time and so did everybody else, he did not stand out?

A. I would say he did, on occasion, cut my prices, as you put it, yes. So did other competitors.

Q. When you say, "on occasion," did you find that he usually cut your price?

A. That is going back so far that it would be rather difficult for me to determine any particular instance at all.

[Tr. A-607] Q. Do you recall that you bore any animosity, that you didn't like Mr. Grimes at this time?

A. No, I would say that is the box business for you. If you are going to be in the business, you have to expect it.

Q. After he cut your prices on these occasions, did you

continue to give him information if he requested it from you?

A. Yes, because I would expect to, perhaps, call him and expect the information. So, I know I could not very well expect to receive past market information unless I would so give him information.

Q. Sir, on these occasions, did you take into consideration the fact that he had cut your price previously?

A. Not particularly, sir, no.

Q. When any new plant or any of these opened up in your area, did you give any consideration to the fact that a new plant had opened up in giving information to persons who requested it?

A. No, I don't think so.

Q. You did not change your practice one way or the other?

A. We would not change our policy at all.

Q. Did you find it to your benefit to give the most recent price you had charged a customer to a competitor who [Tr. A-608] was just opening a new plant?

A. Well, this is, again, the same type of information that we normally would get, ourselves, from a buyer through the package engineers. I wouldn't see where there was any particular benefit to be gained by it.

Q. To be gained by what?

A. By getting information from me I assume he is going to be making an independent price determination the same as I would make when I would call him.

Q. What I meant to ask was, what benefit or did you see any particular benefit to be gained by you in giving this information?

A. Yes, because, again, I would have to be calling him at some later date, possibly, for price information and I felt unless I gave him information I could not very well expect to receive it, myself.

[Tr. A-616]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Owens-Illinois Glass Company: Welch O. Jordan.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeil Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF KENNETH E. ROSENBAUM

(PX-30)

[Tr. A-617] Q. Mr. Rosenbaum, state your full name and residence?

A. Kenneth E. Rosenbaum, 7 Dogwood Road, Salisbury, North Carolina.

Q. And your business address and employer?

A. Owens-Illinois Glass Company, Forest Products Division, Salisbury, North Carolina.

Q. Mr. Rosenbaum, would you give us the history of your employment with Owens-Illinois Glass Company, please, the dates and positions held?

A. Mr. Sliney, I started with the company before it was owned or controlled by Owens-Illinois.

Q. Will you tell us about that?

A. Yes, sir.

I started with National Container in January 1953 as a salesman. National Container was taken over by Owens-Illinois Glass Company in October 1956, and I continued on as a salesman until the spring of 1958. In the spring of 1958 I was made sales manager of the Salisbury Plant. I continued as sales manager until the spring or the summer, I should say, of 1959.

I was made acting general manager and sales manager, and I continued in that capacity until in the fall of 1960 I was made general manager.

[Tr. A-618] Q. I would like to go immediately to a meeting that was held in Salisbury about which several people have testified here that they attended and ask you if you have any recollection of attending a meeting at DiMizio's Restaurant in Salisbury with your competitors?

A. Yes, sir, I do.

Q. Tell us, please, what you recollect about that meeting, sir?

A. Mr. Sliney, the meeting that I recall was held at DiMizio's Restaurant in a private dining room, and the subject was the matter of how the acceptance of an increase in set-up charges had been accepted by the trade.

Q. Sir, when you say had been accepted by the trade, to whom do you refer?

[Tr. A-619] A. By the customers that we were selling.

Q. Do you recall, Mr. Rosenbaum, that there was an increase in set-up charges during the summer of 1959?

A. I cannot tell you it was in 1959 because I do not know, Mr. Sliney.

Q. Mr. Rosenbaum, I show you Document Number "OWE 370" which has previously been used here. It purports to be an Inland Container Corporation estimating and pricing manual. It bears the date of June 15, 1959, and is date-stamped "Received June 19, 1959, Owens-Illinois", "To holders of Inland estimating and pricing manual." It defines the territory which is included in the territory which we have reference to here. It says, "Effective July 1, 1959, Issued June 15, 1959."

There is some additional writing, and then it says: "(B) Page 6, Set-up Charges have been changed."

I would ask you to look at page 6 of that document, Mr. Rosenbaum.

[Tr. A-620] Sir, with reference to the increase in set-up charges which you recall, do you recall the amount of the set-up charge prior to the change and the amount of the change?

A. Yes, sir, I do. The set-up charge prior to the increase I said we were discussing at DiMizio's was \$15 on the regular slotted box. The set-up charge varied depending on the item.

Q. What was the charge on a regular slotted box after the change?

A. \$25.

Q. Sir, with reference to page six of that document have you looked at the price which appears beside a regular slotted carton?

A. Yes, sir.

Q. Does that appear to be the price which you recall as being the set-up charge after the change?

A. Yes, sir.

[Tr. A-622] Q. Prior to the meeting in Salisbury, had you attended another meeting where the subject of increased set-up charges was discussed?

A. Yes, sir, I had.

Q. Where did that meeting take place, sir?

A. In Raleigh, North Carolina.

Q. Do you recall whether it took place in a hotel?

A. Yes, sir, it did.

Q. What hotel was that?

A. Sir Walter Raleigh.

Q. What else do you recall about the meeting?

A. Well, I recall—again I will name one person—I recall Gordon Clark attended the meeting because I took my wife over with me and we were down having breakfast in the morning and Gordon Clark stopped by the table and talked to my wife. So I do remember that.

Q. Do you recall anything else about that occasion?

A. I recall that Mr. Pritchett and Mr. Faulkner came into the meeting and one, which one I don't recall, announced that they were increasing set-up charges from \$15 to \$25. I do recall that, sir.

Q. Were there any comments made after this announcement and while Mr. Pritchett and Faulkner were present?

[Tr. A-623] A. No, sir, not that I know of.

Q. Do you recall any comments or discussion after they left?

A. No, sir, I do not.

Q. Do you recall, sir, how long the meeting lasted?

A. It was a very short meeting, I recall that.

Q. Thirty minutes?

A. I would say 20 or 30 minutes, something in that area, yes, sir.

Q. After this meeting, sir, did the company which Mr. Pritchett and Mr. Faulkner represented, increase their set-up charges?

A. Mr. Sliney, the report we had from customers and salesmen was that they did increase set-up charges.

Q. Did other of your competitors in the area at or about that time increase their set-up charges?

A. I would say shortly after that and following that [Tr. A-624] they did, yes, sir.

Q. Did your company increase its set-up charges?

A. We did, probably four to six weeks after that.

Q. Sir, was the Raleigh meeting prior to the Salisbury meeting?

A. Yes, sir.

Q. About how long a period of time was there between the Raleigh and Salisbury meetings?

A. Between four and eight weeks, in that area.

Q. Sir, were the persons present at the Salisbury meeting all representatives of competitors of yours?

A. Yes, sir.

• • • • •

Q. Do you recall the occasion when the Old Dominion Manual was first published?

A. No, sir, I do not. I was probably a salesman at the time.

Q. Do you recall seeing Old Dominion Manuals?

A. Mr. Sliney, I don't think I have ever seen an Old Dominion Manual.

• • • • •

[Tr. A-625] Q. Other than during that portion or during that Fibre Box Association meeting have you been in the presence of your competitors when the subject of prices of corrugated containers in the Southeastern United States was mentioned?

A. Yes, sir.

Q. What do you recall about those occasions, sir?

A. Mr. Sliney, I remember one meeting in Charlotte when the prices for an account were discussed.

Q. What do you recall about that occasion?

A. The account involved was Spring Cotton Mills and Mr. Roberts announced that they were increasing their prices [Tr. A-626] to Spring Cotton Mills.

Q. Do you remember the occasion on which this took place?

A. As I recall there it followed a Fibre Box Association meeting—it was in the afternoon.

Q. Do you recall how many persons were present?

A. I would say somewhere between five and eight.

Q. Were they all representatives of competitors of yours?

A. Yes, sir.

Q. Do you recall where this took place?

A. Yes, sir, in the Barringer Hotel.

Q. Where in the hotel?

A. In a bedroom.

Q. Whose room was it, sir?

A. I do not know.

Q. How did you come to be there, sir?

A. Again someone must have asked me to attend the meeting. I must have accepted.

Q. Was it your impression, sir, that you had been asked to come there to hear this announcement?

A. Yes, sir.

Q. Do you recall, sir, approximately when this took place?

A. Well, can I give you a range again?

[Tr. A-627] Q. Please, to the best of your recollection.

A. I would say between three and five years ago.

Q. This would be between 1959 and 1961?

A. Yes, sir.

Q. Was there any comment regarding this announcement?

A. No, sir, not that I know of.

Q. Did Mr. Roberts say anything further than that he was going to raise prices?

A. No, sir.

Q. Were the persons present suppliers of the Spring Cotton Mills account?

A. Mr. Sliney, I do not know if they were or not. We were not.

Q. And you have no knowledge regarding the others?

A. No, sir.

Q. Would it be of any value to you to know that Mr. Roberts was raising prices to the Springs Cotton Mills?

A. Mr. Sliney, any market information I can get on any account I like to have, it is valuable.

Q. Sir, during the period from January 1, 1955 to October 14, 1963, have you on any occasion called a competitor of yours to ask for the price that he was then charging a specific customer?

[Tr. A-628] A. Yes, sir.

Q. Did you do this prior to the time in the spring of 1958 when you became sales manager at Salisbury?

A. Did I do that prior to the time I became sales manager?

Q. Yes, sir.

A. No, sir.

Q. So that these requests for information are restricted to the period from the spring of 1958 to October 14, 1963?

A. Yes, sir.

Q. Have these requests continued on up to the present?

A. Yes, sir.

Q. Have you received requests from your competitors for this information during this period?

A. Yes, sir.

Q. Sir, I hand you a copy of the complaint in this action. The first page at least has not been marked and I will have reference only to the first page. I would like to ask you regarding each of these companies the names of the individuals from whom you have requested and received this information?

A. Yes, sir.

Q. Container Corporation of America?

A. Mr. Evans, Mr. Clay and Mr. Colvin.

[Tr. A-629] Q. Sir, again I would ask you to restrict your

answers to the period prior to October 14, 1963. Would that change your answer?

A. No, sir.

Q. Have they also requested this information of you?

A. Yes, sir.

Q. The Albemarle Paper Manufacturing Company?

A. Is Albemarle Paper Manufacturing, Richmond Container?

Q. It was at one time. The Richmond Container Plant is now a part of the Albemarle Paper Manufacturing Company.

A. Yes, sir, Mr. Dozier.

Q. Is there anyone else?

A. No, sir.

Q. Has he also requested information of you?

A. Yes, sir.

Q. The Carolina Container Company?

A. Yes, sir.

Mr. Ingram, Holbrook and Webster.

Q. And they have requested the same information from you?

A. Yes, sir.

Q. Continental Can Company?

A. Mr. Johnson, Mr. Taylor, and Mr. Beams.

Q. And they have requested information from you?

A. Yes, sir.

[Tr. A-630] Q. The Crown Zellerbach Corporation?

A. Yes, sir, Gordon Clark. That is the only one.

Q. And he has requested information from you?

A. Yes, sir.

Q. The Dixie Container Corporation?

A. Yes, sir. Mr. Mitchell, Mrs. Gatewood, Mr. Lett and Mr. Schwind.

Q. Has each of those four persons requested information from you?

A. Yes, sir.

Q. The Dixie Container Corporation of North Carolina?

A. Well, I included that in my answer about Dixie.

Q. The Inland Container Corporation?

A. Yes, sir. Mr. Roberts and Mr. Hogan.

Q. Each of those persons has requested information from you?

A. Yes, sir.

Q. The International Paper Company?

A. Yes, sir, Mr. Reid, Mr. Ennis.

Q. Mr. Reid and Mr. Ennis have also asked you for the same information?

A. Yes, sir.

Q. The Mead Corporation?

A. Yes, sir.

Q. The persons?

[Tr. A-631] A. Mr. Bloom, Mr. Wainscott, Mr. Pridgen.

Q. And you have given information to these gentlemen?

A. Yes.

Q. Miller Container Corporation?

A. Yes, sir. Mr. Kyle, Mr. Noftsinger.

Q. You have also given them information?

A. Yes, sir.

Q. St. Joe Paper Company?

A. No, sir.

Q. St. Regis Paper Company?

A. Yes, sir. Mr. Diggs, Mr. Petrie.

Q. And you have given information to both Mr. Diggs and to Mr. Petrie?

A. Yes, sir.

Q. Tri-State Container Corporation?

A. Yes, sir.

Q. What persons have requested information from you?

A. Mr. McDonald.

Q. And you have also given information to him?

A. Yes, sir.

Q. Union Bag-Camp Paper Corporation.

A. Yes, sir. Mr. Wulff, Mr. Grimes, Mr. Faulkner, Mr. Butler, who is now deceased, Mr. Pritchett.

Q. And you have in turn given information to each of these persons?

[Tr. A-632] A. Yes, sir.

Q. West Virginia Pulp and Paper Company?

A. Yes, sir. Mr. Holt, Mr. Orcutt.

Q. And you have given information to Mr. Holt and Mr. Orcutt?

A. Yes, sir.

Q. The Weyerhaeuser Company?

A. Yes, sir. Mr. Elliott and Mr. Clayton.

Q. And you have given information to both of them?

A. Yes, sir.

Q. The Waterbury Corrugated Container Company?

A. Is that Blue Ridge Container?

Q. Yes, sir.

A. Yes, sir.

Q. The person?

A. Mr. Reynolds.

Q. And have you given Mr. Reynolds information?

A. Yes, sir.

Q. Sir, for the sake of brevity, as we went through the list I have referred to giving information, and I would like to repeat once again, the information to which we had reference was the information which your competitor was then charging a specific customer or where he had made the request, the price which you were then charging a specific customer. Is that the information to which we have reference?

[Tr. A-633] A. Yes, sir.

Q. In each of these cases, sir, was the information given only upon request?

A. Yes, sir.

Q. Sir, when you receive these requests for information, where do you obtain the dollar and cents figure that you supply?

A. I obtain it from sales service order record cards and profile cards which are carried in the sales service department, our estimating department.

Q. Sir, would you describe the sales service order record card?

A. Yes, sir. The sales service order record card is recorded on one side, carries all the specifications of the box, the liner combinations, the style, the printing, the joint, and the figures where we estimate the price, in a column we list if it was quoted to the customer and the date if it was sold, we list the date of the order, the quantity and the price.

Q. Does each of these cards concern itself with one type of container?

A. Yes, sir. The order record card does.

Q. For each specific customer, is that right?

A. Yes, sir. It is a card, complete. If it has pads,

[Tr. A-634] partitions or any interior parts, it is carried on one card to make one complete unit.

Q. The profile card, sir, will you describe it, please?

A. Yes, sir. The profile card carries the name of the customer, the level at which the customer is being sold, and information on method of shipment, and receipt by the customer, and palletizing, bundling instructions, and so forth, general information on the account.

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Q. On what occasions would you have reference to the profile card rather than the sales service order record card in answering a competitor's request?

A. Well, the two are tied together. They give you an opportunity to check because on your profile card you show the dates where any price was changed to a customer and when you pull your order record card, it gives you a check whether you sold the customer a particular item at the last price which you show as being effective for that customer.

Q. The effective price shows on the profile card, and then you are able, by looking at the sales service record card—

A. The order record card, to tell whether we have sold that account since the price had been either increased or decreased.

Q. On these occasions where this information has been [Tr. A-635] requested, do you at all times refer to both cards?

A. Yes, sir.

Q. Have you at any time given a price on a box which had been quoted but not yet sold?

A. It is possible that I have, but it is not a practice.

Q. That possibility would have been during the period to which we have reference, it could possibly have happened during that period?

A. Yes, it could possibly have happened.

Q. On these occasions what is the information which you give to your competitor? Do you give him the level?

A. In the majority of the cases we give the level and the set-up rather than the end price.

Q. Do you give it with reference to a manual?

A. Not with reference to a manual. I would give it as \$12.35 base and \$25 set-up or \$13.60 base and \$25 set-up.

Q. Are there other occasions when you do not give a level and a set-up charge?

A. Yes, sir.

Q. And on those occasions, what information do you give?

A. I give the end price on any particular item a competitor was asking for. In such instances, if they mentioned a particular account, I ask for the box style, the [Tr. A-636] liner combination or the test and the specs on the size and so forth before I give them end prices.

Q. On all of these occasions, sir, have you given the information which actually appears on your records?

A. Yes, sir.

[Tr. A-200]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Owens-Illinois Glass Company: Welch Jordan.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF T. M. COX, JR.

(PX-11)

[Tr. A-201] Q. Will you state your name and home address?

A. T. M. Cox, Jr., 11 San Diego Road, Ponte Vedra Beach, Florida.

Q. Mr. Cox, for the record, will you state your first name?

A. Thomas.

Q. Mr. Cox, with whom are you presently employed?

A. Owens-Illinois Glass Company.

Q. What is your present position?

A. General Manager of the Southeastern region of the Forest Products Division of Owens-Illinois.

[Tr. A-202] Q. During the past two years in your position as General Manager of the Southeast region, what has been your responsibilities as far as the corrugated container operations of Owens-Illinois is concerned?

A. I am responsible for the manufacture and sale of corrugated boxes in the Southeastern United States.

[Tr. A-207] Q. Mr. Cox, would you state for me again so that I can be clear in my questions about the time, ap-

proximately what month and year was it that you became general manager of the Southeast region again?

A. October of 1961.

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Q. In these plants in the southeast region what was [Tr. A-208] your responsibility as to pricing, yours, your personal responsibility as to pricing?

A. It is an overall supervisory responsibility.

Q. During this period who had pricing responsibility in each plant under your supervision?

A. The majority of the decisions are made by the general manager and/or the sales manager.

Q. In these plants did the general manager and sales manager have coordinate responsibility for pricing or was one superior over the other?

A. Well, the general manager of course has the overall responsibility.

.

Q. During this two year period where was your own [Tr. A-209] headquarters?

A. Jacksonville, Florida.

Q. Did you have any occasions during that period to consult with your general manager in connection with prices?

A. Yes, sir.

Q. Did that at any time involve consultation in regard to specific jobs?

A. On occasion, yes.

Q. Would you kind of outline for us how these occasions would come about?

A. If a general manager was considering the advisability of taking some business that was getting pretty close to borderline as to whether we could make a profit on it or not, he would very likely consult with me in an overall sense.

Q. In those cases did you ever make the ultimate decision as to a price to be charged a customer?

A. I suppose that I did, yes.

.

Q. Mr. Cox, will you tell us, please, what was the policy of your company insofar as you know it during this two-year period concerning the giving or receiving of price information to competitors on specific jobs?

A. Our policy was that we did this, both give and receive.

[Tr. A-210] Q. Now, when you first entered upon this job in or about October 1961, was that the policy at that time?

A. Yes, sir.

Q. Did that continue without change up into October 1963?

A. Yes, sir.

Q. Would you tell us, please, how you learned of the policy?

A. No, sir, I am afraid I can't tell you that. I don't remember.

Q. Did you personally ever contact any competitors during this period to obtain pricing information on specific jobs?

A. Yes, sir.

Q. On these occasions did you ever contact a competitor to request specific information?

A. Yes, sir.

Q. Did you also receive requests from competitors for pricing information on specific jobs?

A. Yes, sir.

Q. Now I believe you testified that under normal circumstances the plant manager or general manager, rather than yourself, would determine the price, is that true?

A. Yes.

Q. Will you tell us, please, under what circumstances [Tr. A-211] you would request information from a competitor, pricing information on a specific job?

A. It would very likely be in a case where I had been involved with the general manager in a decision or in a few instances perhaps where the general manager felt that my contact with someone in that other company would result in better information than he felt he was capable of getting.

Q. Well, confining ourselves to situations where you requested the information, would you normally do this as a result of some conference with one of your sales managers?

A. General managers.

Q. General managers?

A. Yes, sir.

Q. Now in situations where information concerning specific jobs was requested of you, how would this arise? Would this come from the plant or would it come direct from a competitor?

A. Direct from a competitor.

Q. From what source in your own company would you obtain the information that was requested?

A. From the general manager of the plant.

Q. Would you call him up by phone, possibly, to obtain that information?

A. Yes, sir.

Q. Would you know of your own knowledge from what [Tr. A-212] source he obtained it?

A. No, sir.

Q. Now, Mr. Cox, when you furnished this information to a competitor, did you give him the accurate information insofar as you had obtained it from your sales manager?

A. Yes, sir.

Q. Mr. Cox, in October 1961, when you first became general manager of the Southeast Region, were you aware of this policy as being in existence prior to that time?

A. I am not sure I understand.

Q. When you became manager of the Southeast Region in October of 1961, did you have any knowledge as to whether the policy of your company of permitting the giving and receiving of price information to and from competitors had been in existence before that time?

A. Yes, it had been in existence before I came to the Southeast.

Q. I believe I would like to ask you: Can you tell us from your recollection what persons you have either given or received this type of information from? From Container Corporation of America?

A. Bill Colvin.

Q. Colvin?

A. C-o-l-v-i-n.

Q. Albemarle Paper Manufacturing Company.

A. No.

Q. Carolina Paper Company?

A. No.

Q. Continental Can Company?

A. Roy Taylor.

Q. Crown Zellerbach Corporation.

A. No one.

Q. Dixie Container Corporation or Dixie Container Corporation of North Carolina?

A. No one.

Q. Inland Container Corporation?

A. Barney Roberts.

Q. International Paper Company?

A. No one.

Q. The Mead Corporation?

A. No one.

Q. Miller Container Corporation.

A. No one.

Q. St. Joe Paper Company?

A. Mr. Ken Hill.

Q. St. Regis Paper Company?

A. Mr. Bill Diggs.

Q. Tri-State Container Corporation?

A. No one.

[Tr. A-214] Q. Union Bag-Camp Paper Corporation.

A. Mr. Lew Wulff.

Q. West Virginia Pulp and Paper Company.

A. No one.

Q. Weyerhaeuser Company?

A. I don't remember anybody there.

Q. The Waterbury Corrugated Container Company?

A. No one.

Q. Mr. Cox, on the occasions when you requested information, pricing information, concerning a specific customer from a competitor, did you request that information in the form of an overall end price?

A. My request was phrased generally that I wanted their past market.

Q. I mean was that in terms of the complete end price?

A. On occasion it was.

Q. In what other forms was it?

A. In the form of the base price for board and set-up.

Q. Would you tell us what in your own knowledge is meant by base board, I believe that is what you used?

A. Yes, sir. It is the price used in calculating the finished price that relates to the amount per thousand board feet of corrugated.

Q. What, in your own words, is the set-up charge, which is the term you used?

[Tr. A-215] A. It is the amount of money that is charged for the set-up of the machinery to run this particular customer's box.

Q. When you received this information, was this, in turn, passed on to the particular sales manager who was involved?

A. The general manager of the plant, yes.

Q. On occasion when pricing information concerning specific customers was requested of you, was the request for an overall end-price or in other terms?

A. Without being able to give you specific instances, my recollection is that it would be in both forms at times.

Q. It would at times include mention of a set-up charge?

A. Yes.

[Tr. A-706]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, St. Joe Paper Company: Jack F. Canady, Jr., Winfield Blackwell, Robert M. Goolrick, Richard A. Whiting.

Other counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF WILLIAM L. THARPE

(PX-35)

[Tr. A-707] Q: Mr. Tharpe, will you state for the record your full name and address and your business address?

A. William L. Tharpe, 325 Shenandoah Drive, Birmingham, Alabama. Business address, 3340 Vanderbilt Road.

Q. Your employer, sir?

A. St. Joe Paper Company.

Q. Will you give us the history of your employment with St. Joe Paper Company, the dates and positions held and locations?

A. Yes. Starting from the longest date, I came to work for St. Joe Paper Company in 1949, in March, I believe it was, as an office manager. I was in that position until about 1954, I believe it was, then I was promoted to sales service manager of the Port St. Joe plant. In the middle of 1959 I was transferred to Birmingham and named general manager of our Birmingham Container Division.

Q. You have continued in that position up to the present?

A. Yes, sir.

[Tr. A-710] Q. During this period, sir, have you ever had occasion to request from one of your competitors the prices which he was then charging a specific customer for a corrugated container?

A. Yes.

Q. Have your competitors requested the same information from you on occasion?

A. On occasion, yes.

Q. When you have received these requests, sir, where did you obtain—I withdraw that.

When you have received these requests, sir, did you supply the competitor with the information requested?

A. Yes, I did.

Q. Where did you obtain this information?

A. We refer to it as a cost sheet and order record card.

Q. Will you describe that for me, please?

A. It is an eight by ten sheet of paper printed on both sides. On one side we have a provision—a special form provision for figuring the price of a box on our cost manual. On the opposite side we have an order record, an order history of that particular container to that particular customer over a period of time and the last price we have sold at. These are actual order records I am speaking of.

Q. When these requests were received did you supply [Tr. A-711] the information which appeared on that record?

A. Yes, I did, from the actual order record.

Q. On any of these occasions did you supply prices which you had quoted but on which you had not yet received an order?

A. No, sir, not to my recollection, I did not. We always took the price we gave directly off our cost and order sheet.

Q. Prior to the time that you began using the St. Joe cost manual did you use the same records to obtain this information?

A. We used a form of the same record. The form since has been revised but we have carried forward the order history.

Q. What was the name of the form again?

A. Cost sheet and order record.

Q. You describe that as containing a place where the cost of the box had been estimated using the St. Joe cost manual?

A. That is right.

Q. Prior to the time that the St. Joe cost manual was available to you what information did this cost sheet and order record contain?

A. It contained essentially the same information except we didn't use St. Joe cost manual. We used whatever [Tr. A-712] available manual we had at the time which was the Inland manual, fully realizing this was not the cost but was a substitute. This was a new plant. At that time we had not developed a cost.

Q. The figure which was arrived at was a selling price, is that right?

Mr. Whiting: What figure are you talking about?

By Mr. Sliney:

Q. Did a dollar and cents figure, a final dollar and cents figure appear on this cost sheet and order record?

A. Yes, ~~in~~ final dollar and cents figure it did. Now this figure may have been, may have had a percentage, five percent, two percent or ten percent added to it or taken from it but a final figure did appear, a figure and then a sub-figure so to speak with a figure added—a figure percentage added to or taken off.

Q. Would the sub-figure represent a selling price?

A. Yes, it would.

Q. Would the information which you supplied to the competitor be the most recent price appearing on that card?

A. Yes, it would.

Q. When you gave this information, sir, did you make any notation on your records?

A. No, I did not.

Q. Do you have any record of any kind indicating [Tr. A-713] occasions when you received or made these calls to your competitor?

A. No, I have no record.

Q. Of what benefit was it to you, sir, to give this information to your competitor?

A. The benefit that I think we arrived at was the fact that we could secure this information, similar information, on occasions when we desired.

Q. From your competitors?

A. From our competitors, right.

Q. Was this the only benefit that you saw that—in giving this information?

A. Well, we made a very sincere effort, and still do, to study our market. This was one of the many factors that

in our opinion we used to study the market to determine the prices. This would at times be available and at other times not necessarily be available.

Q. The giving of information?

A. And taking, both of them.

Q. I am referring to the occasions when you specifically supplied information to your competitors?

A. I think the prime benefit which you derive from that is that I would expect to receive similar information should I request it.

Q. Was there any other benefit to you that you [Tr. A-714] considered in deciding whether or not to supply this information?

A. The benefit that I see, the overall benefit that I derived is that I would not be able to study my market if I didn't have the right to request this information. To me the benefit is not necessarily getting the information but the benefit is using the information to study the market in order to quote the price.

Q. Apart from the information which you were able to obtain from your competitors and referring to the occasions on which you gave information to the competitors?

A. Well, the two are pretty well tied in together. If you give the information you in turn expect information and when you can get the information on occasions when you need it you can use that information to study the market along with other factors involved in quoting a box and deciding what is the price you will quote.

Q. Was the opportunity to obtain this information in the future the only consideration you had in mind when you decided to supply this information to a competitor upon his request?

A. I can't think of any other reason.

Q. Did you seek this information exclusively by telephone?

A. Yes.

Q. Was this information sought from you exclusively by telephone?

A. Yes.

[Tr. A-715] Q. Did this involve long distance phone calls?

A. It did.

Q. In both directions?

A. Yes, sir.

Q. Were there occasions, sir, when more than one phone call was necessary to obtain the information which you desired?

A. I don't ever recall having made or having received more than one telephone call.

Q. With respect to one specific price for one specific customer?

A. That is right.

Q. Do you recall, sir, under what circumstances you would make these calls to your competitors?

A. Yes. I think in order to explain that maybe we should briefly explain, not to take up too much time, the mechanics of this thing. We receive an inquiry from one of our customers either through our salesmen or through the mail. This inquiry comes in, it comes in our sales service department. At that time we analyze this to see if we want the business from the desirability standpoint. Does it fit in with our mix, do we need it, is the credit okay. There are many things to check on this. After it is determined that we do want this particular piece of business in our plant, then we begin to explore how we are going to price [Tr. A-716] this business. At that time we pass it over to our cost department to make the cost on this particular piece of business.

At that time our sales service department has an opportunity to check a number of things there, is the credit okay. Who is the last supplier of this particular box? Has our customer given us guide information or shown us quotes of previous suppliers? Do we have a sample of the box in our plant? Is it the type of board we want to run in our plant? There are a number of things. When we pull these together if it looks like we don't have enough information from the general territory to determine what the price might be, then we might choose to call our competitor and find out what his past market was on that particular item.

I might state this is done with not a lot of frequency. We have many factors involved in this.

Q. When you say past market, sir, will you ask a competitor for the price he was then charging his customer?

A. I would ask the competitor what price he has charged for that particular box. Many times I have a sample of

his box in front of me. If it has a stamp on it I know whose box it was.

Q. This is always in reference to a specific customer?

A. Yes, a specific customer or a specific box for a specific customer.

[Tr. A-720] Q. During the period to which we have reference, Mr. Tharpe, have you ever found yourself in the presence of your competitors when the subject of prices of corrugated containers in the area to which we have reference was mentioned?

A. No, sir.

Q. I would like to ask one question. When you said, as I believe you did, that when you gave information as to [Tr. A-721] past market to a competitor at his request, you expected to get information back, would you clear up for me what you mean by the word "expect"?

A. Well, on occasions when I called the competitor and asked for a price, past market I am speaking of here, in order to use as a basis along with the other factors to compute my price, I would expect him to give me an end price which the price I am asking for is the last price he sold containers for in terms of one price.

Q. Did you have assurance when you gave the price that on another occasion you would get a price back?

The Witness: No, there was no assurance that you would get any price back.

[Tr. A-317]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant: St. Joe Paper Company: Jack F. Canady, Jr., Winfield Blackwell; Robert M. Goolrick, Richard A. Whiting.

Other Defense Counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF KENNETH B. HILL

(PX-18)

[Tr. A-318] Q. Mr. Hill, with whom are you presently employed, sir?

A. St. Joe Paper Company.

Q. What is your present position, sir?

A. Coordinator, Container Division.

Q. Would you tell us, please, how long you have been in that position?

A. Since May first of 1961.

Q. And before that time, were you also with St. Joe?

A. Yes.

Q. In what capacity, sir?

A. General Manager, Hackensack, New Jersey Plant.

Q. And for approximately how long?

A. Twelve years.

Q. Was that position in connection with corrugated container operations?

A. Yes, sir.

Q. Mr. Hill, where are your present headquarters?

A. Jacksonville, Florida.

Q. Would you tell us, please, referring to the period from May 1, 1961, until October, 1963, what were your responsibilities as far as the corrugated container operations of your company are concerned?

A. Overseeing construction and the equipping of new plants.

[Tr. A-319] Q. When you say new plants, does that mean that you did not have supervision over already existing plants?

A. No, it does not mean that. I did.

Q. Now, in each of the plants you have mentioned, what is the position of the person in charge of the plant?

A. General Manager.

Q. Mr. Hill, confining ourselves to pricing as distinguished from operating in the plants, what is your own responsibility as to pricing of containers you sell?

A. I have no responsibility for pricing.

[Tr. A-321] Q. Mr. Hill, did your company during the period May 1961 to October 1963 have a policy regarding giving price information to competitors on specific jobs?

A. A policy? No.

Q. Speaking from your own personal knowledge, during this period of May 1961 to October 1963, do you know whether or not your general managers have at any time given information on prices for specific jobs to competitors?

A. I believe I am on record, as I indicated before, I do not specifically know, but I feel certain that they have.

Q. Fine. Would the same answer apply to situations—strike.

Do you know whether or not during this period your general managers have themselves requested similar information from competitors?

A. Whether our managers have requested from competitors?

Q. Yes, sir. This is the reverse.

[Tr. A-322] A. Not to my knowledge.

Q. You do understand that?

A. I understand. You asked it in the reverse.

Q. All right. Well, then, will you tell us, please, in your own opinion of what benefit was it to your company

during this period of May 1961 to October 1963 to furnish this information on occasion to competitors?

A. You would have to ask the general managers. I don't know.

Q. In view of your experience, would you tell us in your opinion would it be of any benefit to your company?

A. I daresay it would, yes.

Q. Of what benefit?

A. I would call it guidance.

Q. Would you characterize that a little for us, what you mean by guidance?

A. I have heard it referred to as levels. However, I am not familiar with any so-called board base or such as that.

Q. Let me ask you this. How did it provide guidance to your company?

A. In some cases perhaps we were misled as to prevailing prices. We may have seen invoices. This is no attempt to police or involve competitors. It is only for our own information.

[Tr. A-323] Q. Mr. Hill, speaking from your own knowledge of the territory served by your four plants, would you say most of your accounts purchase from several suppliers as distinguished from giving all their business to one supplier?

A. I would say most are supplied by several competitors.

Q. Now if you wished to know what a competitor's price was on a particular account, would there be any way of determining this other than from the purchaser, himself, or from a competitor? If that is not clear, I will re-phrase it.

A. Frankly, I am not interested in the selling price.

Q. I may have confused you. What I am saying is, of what benefit was it to your company in your opinion to give this information to a competitor about your own price?

A. I will say that we were endeavoring not to be destructive.

Q. What do you mean by not to be destructive?

A. Demoralize market.

Q. What do you mean by "demoralize market"?

A. Well, I am sure some, if not all of our competitors have on occasion accepted business at a loss.

Q. Now how would your furnishing or how did your furnishing of information to a competitor do anything to correct that situation?

Mr. Whiting: Objection, Mr. Freeze. I am not sure [Tr. A-324] what the record shows but did Mr. Hill testify that he knows that they furnished information to a competitor?

Mr. Freeze: Rather than go back over it and try to find it, with your permission I will state my recollection and ask Mr. Hill to correct it if I am wrong. It is my understanding that Mr. Hill stated in response to my question as to whether his general managers had given pricing information on specific jobs to competitors, he stated that he felt that they had. I will be glad for Mr. Hill to correct me if I am wrong.

The Witness: That is right. I said I am certain that they have.

Mr. Freeze: Does that answer your question?

Mr. Whiting: Go ahead.

By Mr. Freeze:

Q. Now my present question is as to how the giving of this information benefited your company.

Mr. Whiting: If it was given.

By Mr. Freeze:

Q. If it was given?

A. I will again reply, guidance.

Q. How would giving out your prices be guidance to you?

A. Naturally we didn't wish to lose the business.

Q. Assuming your general managers gave this information on specific prices, whom would this guide?

[Tr. A-325] You stated it would guide. Whom would it guide?

A. The general manager, for his quotations, I am implying.

Q. Whose general manager?

A. Our general manager to the competitor that may have

called and our general manager returned the call, at his request.

Q. Mr. Hill, again I repeat we are confining ourselves to this period of May 1961 to October 1963. When your general managers gave price information on specific jobs to competitors did this in your opinion furnish guidance to the competitor requesting the information?

A. Yes.

Q. Now what benefit would—strike that.

Now what benefit did your company in your opinion derive from that?

A. I feel that it helped them secure additional business.

Q. How would it help them secure additional business?

A. Outselling, promoting, particular quality that we may have felt we possessed or may have had to offer.

Q. Limiting our remarks to the giving of information to competitors by your general managers which you said did furnish some guidance to them, I am still just not clear as to [Tr. A-326] how this would help you in determining or in any way help you in any way. Can you clarify that?

A. Help me personally?

Q. No. Help your general managers or your company in any way. Would you clarify that?

A. I feel that this enabled them to sell at a fair price.

Q. Enabled who to sell at a fair price?

A. Our general managers for our particular plants.

Q. I am still just not quite clear. Your general managers gave a price under these circumstances, is that true?

A. I can't answer for them. I suppose they did. But I can't answer.

Q. What I was getting at, how would that furnish any guidance to your general managers?

A. I feel that this enables them or is a means of ascertaining a fair selling price.

Q. Do you mean your own general managers?

A. Yes, or sales managers.

Q. What I was trying to do, under this situation your general managers would be giving out the information. Is that right?

A. If requested.

Q. Right. How would that enable them, your general managers—

[Tr. A-327] A. To benefit?

Q. —to benefit, yes.

A. To hold on to the business.

[Tr. A-254]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, St. Regis Paper Company: Norman Block, H. Richard Wachtel, Horace Lamb.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF PHILIP B. DUFFY

(PX-14)

[Tr. A-256] Q. Mr. Duffy, with whom are you presently employed?

A. St. Regis Paper Company.

Q. Your position?

A. I am a Group Vice President.

Q. In that position, are you connected with the corrugated container industry of St. Regis?

A. The General Managers of the Folding Carton Division, the Wire-bound Box Division, the Corrugated Container Division, the Sherman Paper Products Division and the Sisal Craft Division report to me.

Q. I don't think I need to remind you that our questions today will be confined to the corrugated container industry.

Now, how long have you been in your present position, Mr. Duffy?

A. Do you mean the Vice President of St. Regis?

Q. Group Vice President.

A. Well, we created this classification or this office last April, in April, 1963.

Q. Before that, what was your position?

A. I was the Vice President of the company and was in charge of the Folding Carton Division, the Wire-bound Box

[Tr. A-257] Division, and the Corrugated Container Division.

Q. And for approximately how long, Mr. Duffy?

A. I was made a Vice President of St. Regis in April of 1960.

Q. Before that, were you connected with corrugated containers with St. Regis?

A. I joined St. Regis when the F. J. Kress Box Company of which I was Executive Vice President merged with St. Regis.

Q. About when was that?

A. On January 1, 1958.

Q. Then your connection with corrugated containers with St. Regis would actually date from January 1, 1958; is that true?

A. Yes, sir.

Q. Mr. Duffy, to your own knowledge, do personnel in your container division of your company contact representatives of competing firms for any type of price information?

A. Yes, they do.

Q. Do you know of your own knowledge whether your own personnel has been requested by competitors to furnish price information on specific jobs?

[Tr. A-258] The Witness: I have to assume they have been contacted. I know this practice is well established in the industry. I am not ignorant of that fact and we have participated in this.

By Mr. Freeze:

Q. What is your company policy in regard to such requests from competitors for information, price information, on specific jobs?

A. Our company policy has been to give and to request information as to past transactions, completed transactions.

Q. In the period, January, 1958 until October, 1963, have there been any policy changes to your knowledge?

A. No, sir.

Q. Now, at what echelon in your company would these exchanges or the giving and receiving of information take place?

A. At the sales manager level and on occasion, probably with the general manager level.

Q. Have there been any occasions when you have been contacted by a competitor for pricing information on a specific job?

A. Well, I couldn't remember exactly who it was but I remember several occasions where customers contacted me about a past transaction.

Mr. Lamb: Customers?

[Tr. A-259] The Witness: I mean competitors.

By Mr. Freeze:

Q. Do you remember any specific instances?

A. No, I don't. I only remember the fact that I don't know any past prices. This is not in my area. I don't have access to past prices.

[Tr. A-216]

Wednesday, March 11, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, St. Regis Paper Company: Norman Block, H. Richard Wachtel, Horace Lamb.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; Carolina Container Company; and Waterbury Corrugated Container Company.

DEPOSITION OF W. L. DIGGS

(PX-12)

[Tr. A-217] Q. State for the record your full name and residence?

A. W. L. Diggs, 819 Phillips Street, Jacksonville, Florida.

Q. Your employer and your business address, please?

A. St. Regis Paper Company, Container Division, Post Office Box 18016, Jacksonville, Florida.

Q. Would you review for us the history of your employment in St. Regis, the dates and positions?

A. I was formerly with the Kress Box Company, Hagerstown, Maryland. St. Regis merged the Kress Box Company January 1, 1958. I was transferred from that location to the Jacksonville location as general manager-sales manager combination, March 15, 1959. I held those two positions until March 1961, at which time Mr. J. W. Petrie was assigned as sales manager.

I continued to hold the title of general manager until the end of the year—Wait a minute. I am confused. 1961, September, I was named Southeastern District Manager and continued to have those two titles until December 31, 1963. January 1, 1964, Mr. Petrie was moved up to general manager. Mr. Thomas Girard, salesman, was moved up to sales manager.

Q. Your present title is Southeastern District Manager, is that right?

[Tr. A-218] A. Yes, sir.

Q. Prior to March 15, 1959, you were not located in the Southeast United States as defined by the complaint?

A. No, sir.

During that period, sir, what geographical area did the Jacksonville plant serve?

A. The Jacksonville plant serviced Florida as far south as Tampa, parallel across the state, Georgia, South Carolina, Alabama.

Q. Was that throughout the period to which we have reference?

A. No, sir. If my recollection is correct, that was up to the fall of 1960.

Q. And then?

A. And then the territory was retracted to its present servicing area.

Q. Which is?

[Tr. A-219] A. Which is Florida to Tampa, the southern half of Georgia, all of South Carolina, and the very edge of North Carolina up to Gastonia, Charlotte.

Q. The area in north Georgia, sir, what happened to that area?

A. That area? St. Regis through acquisition purchased the Atlanta Container Company.

Q. That was in the fall of 1960?

A. That was in the fall of 1960.

Q. And north Georgia is now served by the plant in Atlanta?

A. That plant services a radius of approximately 90 miles from Atlanta, to the edge of Tennessee, Chattanooga.

Q. The Alabama area that had been serviced by the Jacksonville plant?

A. In 1961, in the fall, St. Regis acquired the Nifty Manufacturing Division.

Mr. Lamb: What was it called prior to the designation of Nifty Division?

The Witness: Birmingham Paper Company.

By Mr. Sliney:

Q. That was in 1961?

A. Yes, sir. In the fall.

Q. And the area serviced by that plant?

A. That plant services all of Alabama, the very [Tr. A-220] Panhandle, western section of Florida, one-half of Mississippi on the east, the very edge of Georgia on the west and the western half of Tennessee, up as far as Memphis.

[Tr. A-224] Q. Mr. Diggs, during the period from March 15, 1959 to October 14, 1963, has it been your practice, when necessary, to request of a competitor the price which he had most recently charged a specific customer, for corrugated containers in the Southeast United States?

A. Yes, I have requested that information.

Q. Have your competitors made such requests of you?

A. Yes, sir.

Q. Have you given your competitors the information that they have requested?

A. Not always.

Q. On those occasions when you did give them this information, sir, where did you obtain it?

A. From the completed order hard copy file of the specification as filed under the customer's name by box identification, whatever it might be.

Q. Will you describe the file for us, please sir, what it contains?

A. This file is filed by customer. On one side, it contains the complete customer specification. On the reverse side it contains the manner in which we arrive at the price and a history of the item, as it is received, scheduled and [Tr. A-225] billed.

Q. Is this correct, sir, there was one card for each box specification for each customer; is that correct?

A. That is correct.

Q. When you gave this information, did you give the price which then appeared on that record?

A. Yes, sir.

[Tr. A-230] Q. At any time during this period, sir, have

you discussed the fact that you were receiving these requests and making these requests with Mr. Duffy?

A. Yes, sir.

Q. What do you recall about that discussion?

A. I asked him a policy decision.

Q. Do you recall anything further?

A. I recall that he gave me a policy decision.

Q. Do you recall what that decision was?

A. To continue to give past markets, receive past markets:

Q. Do you recall, sir, that you said anything else at the time other than asking for a policy decision?

A. Not that I recall.

Q. Did you give any reason why you were asking a policy decision at that time?

A. Yes. When I first came to Jacksonville it was in existence and I was not fully cognizant of the manner in which the telephone was being used. I felt it was time to receive a decision.

Mr. Lamb. You mean a decision on the policy?

The Witness: Decisions on the policy of giving and receiving past market.

[Tr. A-231] Q. Did you find, sir, that phone calls, requested—requests for information, from competitors interfered with the performance of your other duties?

A. No, they weren't that numerous.

Q. They were not?

A. No, sir.

[Tr. A-232] Q. With reference to requesting from a competitor the price which he had most recently charged a specific customer and with reference to requests from a competitor and in those instances where you supplied the same information, I would ask you to refer to the list of Defendants appearing on the first page of the complaint filed in this action and list for me the individuals with each of these companies to whom you have spoken, either given

this information or received this information, during the period prior to October 14, 1963.

Container Corporation of America?

A. Norman Alday and Dell Theabold, T-h-e-a-b-o-l-d.

Q. Albemarle Paper Manufacturing Company?

A. I am not familiar with that company.

Q. Carolina Container Company?

[Tr. A-233] A. Carter Holbrook.

Q. Continental Can Company, Incorporated?

A. Roy—Atlanta?

Q. Do you know Mr. Taylor?

A. Roy Taylor.

Q. Is there anyone else from Continental Can Company, sir?

A. Not that I can recall.

Q. Crown Zellerbach Corporation.

A. Fred Rushing, Lee Ross and Gordon Clark.

Q. Dixie Container Corporation?

A. I am not familiar with Dixie.

Q. Dixie of North Carolina?

A. No, sir.

Q. Inland Container Corporation?

A. Mr. Roberts, Mr. Ted Davis.

Q. International Paper Company?

A. Mr. Reid. Mr. Bruce Fox.

Q. The Mead Corporation?

A. Mr. Bloom.

Q. Miller Container Corporation?

A. Not familiar.

Q. Owens-Illinois Glass Company?

A. Tom Cox, Mr. Rosenbloom.

Q. Would that be Rosenbaum, sir?

[Tr. A-234] A. Rosenbaum, correct.

Q. St. Joe Paper Company?

A. Mr. Ashley.

Q. Tri-State Container Corporation?

A. Mr. McDonald.

Q. Union Bag-Camp Paper Corporation?

A. Mr. Lew Wulff, Mr. Frank Grimes and Mr. Pritchett.

Q. West-Virginia Pulp and Paper Company?

A. Mr. Holt.

Q. Weyerhaeuser Company?

A. Mr. Hansen.

Q. Is there anyone else from Weyerhaeuser, sir?

A. George——

Q. Do you know Mr. George King? That is not the name?

A. I can't remember his name.

Mr. Lamb: George Elliott?

The Witness: George Elliott.

[Tr. A-444]

Thursday, March 12, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Tri-State Container Corporation: D. Newton Farnell, Jr., James A. Weller.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; and Carolina Container Company.

DEPOSITION OF ALAN C. McDONALD, JR.

(PX-23)

[Tr. A-445] Q. Mr. McDonald, would you state your full name and address, please?

A. Alan C. McDonald, Jr., 715 Green Lane, Johnson City, Tennessee.

Q. Your employer and your business address?

A. Tri-State Container Corporation, Elizabethton, Tennessee.

Q. Will you review for us the history of your employment at Tri-State Container Corporation?

A. Became employed by Tri-State Container January 1, 1953.

[Tr. A-446] Q. During this period, Mr. McDonald, have you on occasion contacted representatives of your competitors?

A. I have, sir.

Q. To ask the price which they were then charging a specific customer for corrugated containers in the Southeast United States?

A. Past market, yes, sir.

Q. When you say past market, sir, what do you mean?

A. Consummation of a sale.

Q. The consummation of a sale?

[Tr. A-447] A. In other words, if I am calling somebody, I don't care what he is quoting, I want to know what in the past he has sold boxes for.

Q. Do you have any way of knowing, sir, whether he is giving you a quote or—

A. Absolutely not.

Q. And the sale in which you would be interested, is that the most recent sale?

A. That is correct.

Q. During this period have you been contacted by competitors?

A. Yes, sir, I have.

Q. What information have they sought from you, sir?

A. Past market.

Q. The information which you supplied would be your most recent past sale?

A. Correct.

Q. This would be in reference to a specific customer?

A. That is right.

Q. Was this throughout the period from January 1, 1955 to October 14, 1963?

A. Yes, sir.

Q. Mr. McDonald, I show you a copy of the complaint as filed in this action. With reference to the list of defendants appearing on the first page I would ask you, have [Tr. A-448] you either—I ask you, would you name for us please, sir, the individuals with each of these companies to whom you have given or from whom you have received what you have defined as past market information with reference to a specific customer during the period to which we have reference and in the southeast United States?

Container Corporation of America?

A. Bill Colvin, Adolph Clay, and J. D. Evans. That is all I can recall right now.

Q. The Albemarle Paper Manufacturing Company?

A. I am not too positive about that but possibly I have had communications with Tony Bagley—that is Richmond Container.

Q. Carolina Container Company?

A. C. T. Ingram, Carter Holbrook, Tom Webster.

Q. Continental Can Company, Inc.?

A. Bob Groner, Bill Beams, Roy Taylor.

Q. Crown Zellerbach?

A. George King, Lee Ross, Gordon Clark, Cline Bennett.

Q. Dixie Container Corporation?

A. To my best recollection, Mr. Mitchell and Mr. Schwind. That would include North Carolina.

Q. That includes Dixie Container of North Carolina?

A. Yes.

Q. Inland Container Corporation?

[Tr. A-449] A. Lew Reid and Spike Ennis.

Q. International Paper Company?

A. Wait a minute. Inland. I am sorry.—Inland would be Frank Talbot and Barney Roberts.

Q. Now International Paper Company?

A. Lew Reid and Spike Ennis.

Q. The Mead Corporation?

A. Dave Bloom and Bob Waincott.

Q. Miller Container Corporation?

A. Harold Kyle and Bill Noftsinger.

Q. Owens-Illinois Glass Company?

A. Ken Rosenbaum, Hays McKee.

Q. St. Joe Paper Company?

A. I don't think so.

Q. To the best of your recollection you have not?

A. That is right.

Q. Neither received—you have neither received nor requested information?

A. Yes.

Q. St. Regis Paper Company?

A. Petrie, I think his name is.

Q. Union Bag-Camp Paper Corporation?

A. John Pritchett, Ed Faulkner, John Butler, Lew Wulff.

Q. West Virginia Pulp & Paper Company?

A. Dave Orcutt, Alan Holt.

[Tr. A-450] Q. Weyerhaeuser Company?

A. Ivan Wood, George Elliott and Alan Clayton.

Q. The Waterbury Corrugated Container Company?

A. Joe Reynolds.

Q. With reference to all of these companies, sir, you have either received or given what you have referred to as past market information?

A. That is right.

Q. Are these priced on a delivered basis?

A. That is right. With some exceptions. We have pick ups very occasionally in the plant where a customer will have trucks coming through our location and they will pick up an order.

Q. That would be an exceptional situation?

A. It would.

[Tr. A-451] Q. Have you ever received by telephone from a competitor a specific customer's price on an occasion when you have not requested this information?

A. No, sir.

[Tr. A-514]

Thursday, March 12, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, West Virginia Pulp and Paper Company: Armistead W. Sapp, James Dale Thom.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; and Carolina Container Company.

DEPOSITION OF DAVID ORCUTT

(PX-26)

[Tr. A-515] Q. Mr. Orcutt, will you state for the record your full name, and address?

A. David B. Orcutt, Jr., 8030 Marilea Road, Richmond, Virginia.

Q. Mr. Orcutt, your employer and your business address, please?

A. West Virginia Pulp and Paper, 2300 Jefferson Davis Highway, Richmond, Virginia.

Q. Mr. Orcutt, would you trace for us the history of your employment with West Virginia Pulp and Paper Company, please?

A. I was employed by Hinde and Dauch Paper Company in 1941 which merged with West Virginia in 1953, operating as a subsidiary until 1957 when it was fully merged and became a division.

Q. Sir, what positions did you hold during that period?

A. Since July of 1962, I have been regional sales manager of the Richmond region. From 1956 until that date, district sales manager of the Richmond district. From 1954 until 1956, assistant district sales manager. From 1949 through 1953 a salesman. From 1946 until 1949, head of the order department. Prior to that, an estimator.

[Tr. A-517] Q. Mr. Orcutt, do you recall any other occasions during the period from October 1957 to October 1963 when you were in the presence of your competitors and the subject of price of corrugated containers in the Southeastern United States was mentioned?

A. Yes.

Q. What do you recall, sir?

A. I recall a meeting at the Raleigh Hotel in Richmond, Virginia.

Q. What do you recall about that meeting, sir?

A. I recall individuals who were present.

Q. And their names?

A. Do you want me to give those to you?

Q. Yes, please.

A. There was Mr. Beams and Mr. Wall, of Continental Can; Mr. Johnson of Dixie Container; Mr. Dozier of Richmond [Tr. A-518] Container; Mr. Noftsinger of Miller Container.

Q. And Mr. Piemonte?

A. And Mr. Piemonte and myself of West Virginia.

Q. Do you recall the time of day when this meeting took place?

A. It was in the evening.

Q. Do you recall the occasion, the year?

A. 1959.

Q. Do you have a specific date?

A. As I recall, it was August.

Q. August of 1959?

A. Yes.

Q. Do you recall, sir, how these people came to be there together in the evening?

A. I told them.

Q. How did you tell them?

A. By telephone.

Q. What did you tell them on the telephone?

A. I told them that we had heard that this customer had advised them of a decrease that we had made in prices and that Mr. Piemonte would explain to them the position of our company.

Q. Did Mr. Piemonte suggest that you call these people?

A. I am sure it was mutual between us, yes.

[Tr. A-519] Q. After a discussion between the two of you?

A. Yes.

Q. Had there been a price increase in this account prior to this?

A. There had been, yes.

Q. What was the nature of that price increase?

A. Would you define for me what you mean by "nature" of it?

Q. Did your company increase its price?

A. Yes, we did.

Q. What was the increase in the price?

A. As I recall, it was approximately 10 percent.

Q. Did other companies increase their prices in that account at that time?

A. I would not know.

Q. Was it your impression at that time that other companies had increased their prices?

A. It was.

Q. Were the companies which were represented at that meeting all suppliers of that account?

A. To the best of my knowledge, yes.

Q. Were there any other suppliers to that account?

A. So far as I know, there were not.

Q. What was the name of the account?

A. Hygrade Corporation.

[Tr. A-520] Q. Is there anyone whom you called who did not come to the meeting?

A. No.

Q. Do you remember, sir, was this a weekday? Was this a business day?

A. I am sure it was a weekday.

Q. Did you go to the meeting from your office?

A. I went home and had my dinner, first.

Q. The meeting took place after dinner?

A. That is correct.

Q. About how long did the meeting last?

A. Probably not more than 30 minutes.

Q. What sort of room was the meeting held in?

A. It was a meeting room, the difference I have already established.

Q. Was it a small meeting room?

A. Quite small, like a parlor in a hotel.

Q. Had you made reservations for this room?

A. Yes, I did.

Q. Had you made those reservations the same day?

A. Possibly so.

Q. At the time you telephoned, did anyone ask you any questions?

A. I don't recall any specific questions.

Q. Had any of these persons previously or about the [Tr. A-521] same time contacted you and asked you about this decrease?

A. I believe I stated it previously, that I had gotten some calls.

Q. Do you recall who called you, sir?

A. No, I don't.

Q. Do you recall representatives of which companies?

A. I could not say definitely.

Q. What was the nature of these calls you had received prior to the meeting?

A. It involved whether or not our policy as announced by West Virginia had been changed.

Q. What was the policy which had been announced, sir?

A. That our prices would be increased.

Q. How was that announcement made?

A. As I recall, through the trade journals.

Q. What journals would those be, sir?

A. They would be the Wall Street and the official board market.

Q. Was this policy announced generally to take effect throughout the Southeast?

A. Yes.

Q. Do you recall when that announcement had been made?

A. No, I do not recall. I could not state.

Q. Do you recall in relationship to August 1959, had it been a month earlier?

[Tr. A-522] A. I would presume possibly a month earlier.

Q. What had you replied to these calls at the time that you received them?

A. What had I replied to them?

Q. When these persons had called you?

A. That Mr. Piemonte would state the policy of our company.

Q. Would you tell us, sir, what happened after the last person arrived?

A. Mr. Piemonte made the announcement that our policy concerning increases had not been changed, that it was our good judgment when we negotiated with the account that we had reduced our level 5 percent.

Q. Did you add anything to it?

A. I did not.

Q. Was that the extent of Mr. Piemonte's opening remarks?

A. His opening remarks as far as I remember, that was in essence what he said.

Q. Did this occur in connection with any other account at that time, sir?

A. No, it did not.

Q. Has it occurred in connection with any other account [Tr. A-523] during any time during the period to which we have reference and at this time—

Q. Had a meeting of the type which you have described taken place, whether or not you called it, but of which you have knowledge, taken place at any time during the period from October 1957 to October 1963?

A. That I attended?

Q. Of which you have knowledge?

A. As far as I know, no.

Q. Excluding your company, sir, has a meeting of this kind taken place among any of your competitors during this period of which you have knowledge?

A. I would not know. This is the only meeting of that nature or type that I attended.

Q. Or of which you have knowledge?

A. Or of which I have knowledge.

Q. Did any of the persons there present make any statement as to what they intended to do?

A. They did not.

Q. Did the amount of business which you were doing with the Hygrade Corporation increase subsequent to this cut in your price?

A. No, it did not.

Q. Sir, I have asked you whether you had previously [Tr. A-524] increased your prices to this account, and you have answered that question.

A. Yes, sir.

Q. Had these other companies, to your knowledge, increased their prices to that account at or about the same time?

A. I don't know.

Q. You have no knowledge of that?

A. That is correct.

Q. Do you have or did you have at that time an impression as to what these companies had done?

A. My impression was that the prices had been increased.

Q. By your competitors?

A. Yes.

Q. To Hygrade?

A. That is correct.

Q. At or about the same general time?

A. Approximately, yes.

Q. Other than the meetings which you have described do you recall any other meetings which you have attended during this period?

A. I remember one such meeting, yes.

Q. Where did that take place?

A. It took place in the office of Mr. Mitchell of [Tr. A-525] Dixie Container.

Q. Approximately when, sir? On what occasion?

A. I believe it was in February of 1962.

Q. Do you recall what companies were represented at the meeting, sir?

A. I can recall some of them, yes.

Q. Please.

A. Continental Can, Miller Container, Richmond Container, and I was there from West Virginia.

Q. Were there other companies represented?

A. Mr. Mitchell, of course, was there, of Dixie.

Q. This is the Mr. Mitchell in whose office the meeting was held?

A. That is right.

Q. Were there other companies represented?

A. I do not recall any others.

Q. Do you recall there were no others?

A. I do not recall any others being present.

Q. What was the subject of the discussion?

A. There had been a board increase, that is liner board increase, and the discussion concerned whether or not the various companies would attempt to recover these increased costs.

Q. By the various companies, sir?

A. I refer to the companies that I have named as the [Tr. A-526] ones I recall being there.

Q. Did you make any statement as to your company?

A. Our company had advised us that we would attempt to increase prices sufficiently to recover this increased cost and I did convey that to this group.

[Tr. A-527] Q. During the period from October, 1957 to October 14, 1963, have you, on occasion, contacted your competitors to obtain from them the price which they were then charging a specific customer for corrugated containers in the Southeast United States?

A. Yes.

Q. Have you been contacted in like manner by your competitors?

A. Yes.

Q. For the same information?

A. Yes.

Q. How did these contacts take place, sir?

A. By telephone.

Q. Was this true on all occasions?

[Tr. A-528] A. I don't recall any in person.

Q. Did these telephone contacts involve long distance calls?

A. Some of them did, yes.

Q. Both those that you made and those that you received?

A. Yes.

Q. On those occasions, sir, when you gave this information to a competitor where did you obtain the information?

A. I obtained the information from an estimate sheet and a quotation.

Q. Are these records that are kept in your plant?

A. They are kept in our office, yes.

Q. Will you describe them for us, please?

A. An estimate is where we estimate to determine a price. A quotation is where we have formally given those prices to a customer.

Q. The figures appearing on the estimate sheet have not necessarily been quoted to a customer?

A. They would be. If they appear on an estimate sheet they would be quoted to a customer, yes.

Q. They would be quoted in the future to a customer?

A. No. When they are put on an estimate, they are also quoted. A formal quotation is mailed to the customer. [Tr. A-529] Unless there is a new size which we have received an order for, we do not necessarily mail a quotation on that.

Q. You are describing an instance where you are already supplying a customer?

A. That is correct.

Q. Is the quotation prepared simultaneously with the estimate sheet?

A. It would have to be prepared after the estimate sheet.

Q. How long after?

A. Usually within the day or two days.

Q. Does the same person prepare both?

A. No.

Q. Has there been an occasion during the period to which we have reference when you have given a competitor a figure from an estimate sheet without knowing whether a quotation had been prepared?

A. I don't recall having done that, no.

Q. Is it possible that that could have happened?

A. The only instance that that could have happened would be if we had supplied a size which we had not formerly quoted the customer. We had supplied the item, however.

Q. When you say supplied, sir?

A. We had manufactured the item, shipped it and invoiced it.

[Tr. A-530] Q. Why would that be the only instance?

A. Because, if we are getting out a price list, we normally follow that with a—after the estimates are completed we follow with a quotation. But if an order should come in for a change in size we would not necessarily confirm that price to the customer except by the way of acknowledgement.

Q. Sir, I have reference to the one- or two-day lapse—I withdraw that term—the one- or two-day difference in time between the time a figure is put on the estimate sheet and the time that a quotation is prepared. Is it possible that a call could have been received by you and the information on the estimate sheet given prior to some other person in your organization preparing a quotation?

A. I don't recall that ever happening. The elapse of time between an estimate and when you mail the formal quote, which we do, except in some instances, is a matter of getting it through your system in the office. It may be done within a matter of minutes. Conceivably, it could be carried over until the next day.

Q. When you gave this information to a competitor, did you, on all occasions, have knowledge that a quotation had been prepared?

A. Yes, I did.

Q. On these occasions, sir, how were these quotations [Tr. A-531] delivered to your customers?

A. They were either mailed direct or sent by the salesman on a call and the quotation was so marked.

Q. How would they be sent to the salesman?

A. It would be either mailed to him or it would be given to him if he came into the office.

Q. Did you, on all occasions, when you gave to a competitor the information on an estimate sheet, have knowledge that the quotation was in the customer's hands?

A. To the best of my knowledge, it was.

Q. I will ask you again, sir. Did you have knowledge on all occasions that this was true?

A. We expect and instruct our salesmen that they do not hold estimates.

Q. I understand that is a policy of your company, sir. I am asking now for a specific instance when information was given to a competitor, and I am asking whether in each of these instances you knew that the customer had that quotation in his possession.

A. I could not say I knew it definitely, no.

Q. On the occasion, sir, when you have requested from a competitor the price which he was then charging a specific customer for corrugated containers in the Southeast United States, what information did you request?

A. I requested what price they had charged.
 [Tr. A-532] Q. What was the information that you desired?

A. The price which they had charged for a specific item or items.

Q. Was it the most recent price that you desired?

A. The most recent price was the one that I would ask for, yes.

Q. When you gave this information, did you give it in terms of an end price on all occasions?

A. No.

Q. What did you do, sir?

A. It could have been a level as well as end price.

Q. Did you give one more than the other?

A. That would be difficult to answer. I shouldn't think it would be one so much greater than the other, no.

[Tr. A-533] Q. Mr. Orcutt, that is a copy of the Complaint filed in this action which you have before you. I would like to [Tr. A-534] go through the list of Defendants which appears on the first page of the complaint and ask for the names of those individuals to whom you have given the price which you were charging a specific customer or from whom you received a price which they were charging a specific customer for corrugated containers in the Southeastern United States during the period from October, 1957 to October, 1963.

A. All right.

Q. Container Corporation of America?

A. Mr. Evans.

Q. Are there any others?

A. I don't recall any others.

Q. Albemarle Paper Manufacturing Company?

A. Mr. Dozier and Mr. Bagley.

Q. Carolina Container Company?

A. Mr. Holbrook and Mr. Ingram.

Q. Continental Can Company, Inc.?

A. Mr. Beams and Mr. Johnson and Mr. Groner.

Q. Crown Zellerbach Corporation?

A. Mr. Clark.

Q. Dixie Container Corporation?

A. Mr. Mitchell, Mr. Johnson.

Q. Dixie Container Corporation of North Carolina?

A. No.

Q. Do you know Mr. Schwind?

[Tr. A-535] A. No, I do not.

Q. Inland Container Corporation?

A. Mr. Roberts.

Q. International Paper Company?

A. Mr. Ennis and Mr. Reid.

Q. The Mead Corporation?

A. Mr. Wainscott.

Q. Miller Container Corporation?

A. Mr. Noftsinger. Mr. Kyle.

Q. Owens-Illinois Glass Company?

A. Mr. Rosenbaum.

Q. St. Joe Paper Company?

A. No.

Q. St. Regis Paper Company?

A. No.

Q. Tri-State Container Corporation?

A. Mr. McDonald.

Q. Union Bag-Camp Paper Corporation?

Q. Mr. Faulkner.

Q. Weyerhaeuser Company?

A. Mr. Elliott.

Q. Have you on any occasion by telephone, received without requesting it, the price which a competitor was then charging a particular customer?

[Tr. A-536] A. I do not recall any such conversation.

Q. During this period when you were making or receiving these calls under what circumstances would you make such a call?

A. It might have been under one or more circumstances. It might have been to confirm information which I had or it may have been to seek market information which I did not have.

Q. Was it of any benefit to you, sir, to give this information to a competitor when he called you?

A. I don't think it was any particular benefit that I gave him information, no.

Q. What was your reason for giving this information, sir?

A. If I didn't give it at times I might want to receive such information. So I gave it.

Q. Would you clarify that?

Would you read back the answer, please?

(The answer referred to was read by the reporter.)

The Witness: What I said or what I meant to say was that if I gave it I would hope that if I were seeking such information that it would be given me.

By Mr. Sliney:

Q. If you did not give it?

A. I have no way of telling what might happen.

[Tr. A-722]

Friday, March 13, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Weyerhaeuser Company: Fred B. Helms, Daniel C. Smith.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Carolina Container Company, St. Regis Paper Company and the Waterbury Corrugated Container Company.

DEPOSITION OF IVAN D. WOOD

(PX-36)

[Tr. A-724] Q. Mr. Wood, with whom are you presently employed?

A. Weyerhaeuser Company, Tacoma, Washington.

Q. What is your present position?

A. I am Vice President or Division Vice President and Manager of the Shipping Container Division.

Q. How long have you been in that position, sir?

A. Since June of 1962.

Q. Before that, what was your position?

A. I was Southern Regional Vice President, Weyerhaeuser Company, Container and Carton Divisions.

[Tr. A-725] Q. For approximately how long?

A. Eighteen months.

Q. That would go back to about the first of the year 1961, is that about right?

A. Yes, sir.

Q. Now, were you with Weyerhaeuser prior to that period?

A. Yes, sir.

Q. In what capacity?

A. I was Executive Vice President of Weyerhaeuser Southern Corporation, a wholly owned subsidiary, from June 20, 1959, until December 31 or the 1st of 1963.

Q. Before that?

A. I was Vice President in Charge of Sales of the Old Dominion Box Company from December of 1954 until June 1959.

Q. Mr. Wood, in the complaint which was filed in this case, we have defined the Southeastern United States as including the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky.

Now, in your present position what would be your responsibilities and duties insofar as that particular area is concerned?

A. You mean my position as of this moment?

Q. Yes.

A. We have four regional managers who report directly [Tr. A-726] to me. There is a regional manager responsible for the operations in these areas, these states.

Q. They report to you?

A. Yes, sir.

Q. Now, in my questions, unless I specify otherwise, they will be confined to the period since June 1959 when you left Old Dominion and became connected with Weyerhaeuser Corporation.

A. All right, sir.

Q. During the period prior to June 1962 when you took your present position, I believe you stated you were Southern Regional Vice President, is that right?

A. Yes, sir.

Q. Now, what were your responsibilities in that position, particularly as to pricing of containers in the Southeastern United States?

A. I was responsible to see that our products were priced at a profit and so delegated the responsibility to the resident managers in charge of our plants in this area.

[Tr. A-727] Q. Mr. Wood, during this period from June 1959 until last October did the sales managers of your—strike that. During this period from June 1959 to October 1963 were your sales managers at times requested to supply price information regarding specific customers by competitors?

A. Yes, sir.

Q. To the best of your knowledge when receiving these requests did they supply the information?

A. Not all the time but I would say generally, yes.

Q. On those occasions when they did supply the information would you tell us where, within your own organization they obtained the information?

A. I could not answer for them but I can generalize. We have a card index system which shows the account, the box number, and the end price. This is in one section. Then we also have folders as to how that price was derived. And whether they will use it or the end price I couldn't answer.

Q. Now as to you personally during this period when [Tr. A-728] you were with Weyerhaeuser and let us say for this purpose prior to the time you took your present position, in other words, this would be during the period of June 1959 to January 1, 1961, were you personally requested by competitors at times to supply price information?

A. At times, yes, sir.

Q. When you received these requests did you supply the information requested?

A. Yes, sir.

Q. Now confining ourselves to you personally how did you obtain this information?

A. We had a rather unusual geographical set up. My office was at that time approximately six or seven hundred yards from the shipping container manufacturing facilities and their general offices. If I was called, I would call over there and ask them to take the card file and give me the end price. I would not go over to see it, to pull it out, myself.

Q. That would be as to information which was available within the city, is that true?

A. Yes, sir.

Q. Did you ever receive any calls for information which was possibly available in other plants?

A. No, sir.

Q. Now when you received these requests, Mr. Wood, was [Tr. A-729] the information requested the most recent price for that particular customer?

A. Yes, sir.

Q. Was it confined to a price you had used in an actual sale or would it also include a price where you had merely quoted but possibly had not completed the sale?

A. No, sir, it would be an actual sale.

Q. Upon these occasions did you supply accurate information on all occasions as far as you knew it to be accurate?

A. As far as I knew, yes, sir.

Q. I would ask you, have you personally requested this same type of information from competitors?

A. Infrequently, yes, sir.

Q. Now again referring to defendants other than Weyerhaeuser named in the complaint, I would like to go through these defendants once again and ask that you tell me, as I name each defendant the person or persons with—from whom you have received requests for price information on specific customers or have, yourself, requested that information from them. Is that clear?

A. Yes, sir, it will be a little difficult.

Q. That is also during the period prior to October 14, 1963 and extending back to when you first came with Weyerhaeuser?

[Tr. A-730] A. Yes.

Q. Container Corporation of America?

A. Mr. Colvin.

Q. Albemarle Paper Manufacturing Company?

A. I am not certain.

Q. Carolina Container Company?

A. Mr. Ingram and Mr. Holbrook.

Q. Continental Can Company, Inc.?

A. I am not certain.

Q. Crown Zellerbach Corporation?

A. Gordon Clark.

Q. Dixie Container Corporation and Dixie Container Corporation of North Carolina?

A. This is the period of June—no one.

Q. Inland Container Corporation?

A. Mr. Talbot.

Q. International Paper Company?

A. No one.

Q. The Mead Corporation?

A. No one.

Q. Miller Container Corporation?

A. Mr. Kyle.

Q. Owens-Illinois Glass Company?

A. Mr. Cobb.

Q. And St. Joe Paper Company?

[Tr. A-731] A. No one.

Q. St. Regis Paper Company?

A. No one.

Q. Tri-State Container Corporation?

A. Mr. McDonald.

Q. Union Bag-Camp Paper Corporation?

A. I believe Mr. Butler.

Q. West Virginia Pulp & Paper Company?

A. Alan Holt.

Q. I will ask you this one. I am not sure but what you previously stated you did not know the company. If so, you may just repeat that.

The Waterbury Corrugated Company?

A. No.

Q. Now, Mr. Wood, in connection with the persons you have just identified as having responsibility to, I am not sure I made it clear so that we will repeat or try to make it clear at this time.

On occasions, when you spoke to or contacted the persons you have named, were these occasions when you either requested from them price information as to specific customers or were they occasions when you were requested for such information?

A. A general answer is when I was requested.

Q. I am sorry, I wasn't asking which of the two. What [Tr. A-732] I was asking was, were these contacts in connection with the giving or receiving of price information on specific customers.

A. Yes, sir.

Q. On this occasion, was the price given your most recent price?

A. Yes, sir.

Q. On occasions when you received the information, was the information requested the most recent price?

A. Yes, sir.

Q. Just for clarification again, I think when we were getting these names, you indicated some uncertainty and I am not sure whether your uncertainty was as to whether you had made such calls or the names of the individuals. Will you clarify that?

A. Names of the individuals because I have been away from here for sometime and, of course, the personnel change. For example, I mentioned Owens-Illinois, Mr.

Cobb. I don't think Mr. Cobb is in this area now. You do have a line between June of 1959 and—

Q. Yes. Mr. Wood, going back to the period from January 1, 1955 until June of 1959 when, I believe, you testified you were with Old Dominion Box Company?

A. Yes, sir.

Q. Did you have occasion at any time to give or receive [Tr. A-733] price information from competitors as to specific customers?

A. On a limited basis, yes, sir.

A. The first manual that was used by my employer was a manual that was devised within the organization, commonly known as the Old Dominion Manual.

Q. Do you know the date or approximate date when that particular manual first came into being, was first published?

A. In the last half of 1956.

Q. Do you know any of the circumstances about its first being published or coming into being? Do you know how it came to be published?

A. Yes, I know some of the details.

Q. Maybe I can be a little more specific. Was the manual prepared by Old Dominion Box Company? After its preparation, do you know to what class of people meaning either customers, competitors, others, the manual was sent to?

A. Yes, sir.

Q. Which type?

A. It was given general distribution in the trade and quite wide distribution among the customers.

[Tr. A-734] Q. From your own knowledge, do you know if Old Dominion was able to adhere to that practice of selling strictly on the manual?

A. I can tell you book, chapter and verse. As a result of this policy, Old Dominion lost the majority of their so-called medium size accounts. If I can explain, the manual became an instrument to discount from in large volume accounts. When it first went into effect, I had the order department send me a list, daily, of what this one-price

policy was doing to our product mix. Half of the prices came down and half of them went up.

In the main, I think that the more prices, because heretofore, I didn't go into it because I don't think it is pertinent but heretofore there was no pattern to the market. We would been having a price of "X" number of dollars for a certain box here and something else for something over here.

[Tr. A-735] As many prices went down as went up. As a result of it, naturally, this price was attractive to small lot customers. Old Dominion within three months became what I would phrase as a job-lot company and also had sales decreased on a comparable basis from 55 to 56 to about 25 percent.

Q. Did Old Dominion, within this period so far as you know, make any change for adjustment to take care of that situation within their own company?

A. I don't understand the question.

Q. If I understood your previous answer correctly, you indicated that rigid adherence to the manual was not, the policy of rigid adherence to the manual was unsuccessful; is that correct?

A. Yes, sir.

Q. Was any adjustment then made to remedy that?

A. No, sir. We stuck to the one price, Mr. Dillard's one price.

Q. Within your own knowledge, would you have any way of knowing whether the trade generally, that is the competition stuck to the same price?

A. I would say they did not. I would say this Old Dominion Manual became a vehicle to discount from.

[Tr. A-261]

Friday, March 13, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Weyerhaeuser Company: Fred B. Helms, Daniel C. Smith.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Carolina Container Company, St. Regis Paper Company and the Waterbury Corrugated Container Company.

DEPOSITION OF GEORGE W. ELLIOTT, JR.

(PX-15)

[Tr. A-263] Q. Mr. Elliott, with whom are you presently employed?

A. Weyerhaeuser Company.

Q. For how long have you been with Weyerhaeuser, confining ourselves to the period since January 1, 1955?

A. Since July 19, 1959.

Q. Will you give me that date again?

A. I believe it is June or July—June 1959.

Q. What is your present position, sir?

A. I am resident manager of the Charlotte plant.

Q. How long have you been in that position?

A. Since approximately December 19, 1963.

Q. What was your position just prior to that?

A. Sales manager.

Mr. Helms: By way of clarification, I question whether he was sales manager of that particular plant. He [Tr. A-264] assumes that—

The Witness: Sales Manager of the Charlotte plant.

By Mr. Freeze:

Q. For how long, sir?

A. I believe it was the middle of August, 1961.

Q. And before that during the period June 1959 until August 1961, what was your position?

A. I was Sales Representative for the Charlotte plant.

Q. Now during the period when you were sales manager at the Charlotte plant and also resident manager, who had pricing responsibility?

A. I did.

Q. Did you have pricing responsibility in both of those jobs? You testified, I believe, that part of the period you were sales manager and later you were resident manager.

A. I didn't become resident manager until December 1963.

Q. While you were sales manager, did you have pricing responsibility?

A. Yes, sir.

Q. Did you actually determine the final price to be quoted to customers?

A. On, I would say, 75 percent of the time, yes. The [Tr. A-265] rest of the time on specific occasions I would consult the resident manager and we would, of course, make the decision together.

Q. Did you during that period use a pricing manual in computing prices?

A. Yes, sir.

Q. Which manual did you use or which manuals did you use during that period?

A. To my knowledge the manual that we are now using is our own, Weyerhaeuser Manual.

Q. Did you ever use any other manuals during this period?

A. No, sir.

Q. Are you familiar with other manuals?

A. No, sir.

Q. Mr. Elliott, from your own experience during this

period, did most of your customers buy from several suppliers at the same time or confine their purchases to a single supplier?

A. I would say several suppliers.

Q. Clarifying that a little bit, if a customer desired to purchase a box, one particular box, was it your experience [Tr. A-266] that he would normally buy that particular box from several suppliers or from a single supplier?

A. I would say the greatest percentage would be from several suppliers.

Q. During this period from August 1961 to October 1963 did you personally receive requests from competitors for price information regarding prices to specific customers?

A. Yes, sir.

Q. Upon those occasions when you received these requests did you furnish the information requested?

A. Yes, sir.

Q. Would you tell us, please, how you obtained the information, how you assembled the information in response to these requests?

A. We have a file on all our orders and specifications and I would go to this file and get this information and pass it on to the person who was calling.

Q. Was the information requested the most recent price at which you had sold a specific customer?

A. Yes, sir.

Q. Did the information you furnished include situations where you had merely quoted as distinguished from a completed sale? If that is not clear I will rephrase it.

[Tr. A-267] A. If you will.

Q. All right. On any of these occasions when you furnished information in response to a request was any of the information a price which you had quoted to a customer as distinguished from a price at which you had actually sold?

A. Which we sold.

Q. Now did you on all occasions, to the best of your present recollection, furnish truthful and accurate information in response to these requests?

A. Yes.

Q. Now have you also personally requested this type of information from your competitors?

A. Yes, sir.

Q. Referring again to the companies other than Weyerhaeuser Company which are named in the complaint in this action I would like to go through these and ask you as to each company, the names of the person or persons with whom you either gave—to whom you gave or from whom you received price information on specific customers.

Is that clear?

A. Yes, sir.

Q. Container Corporation of America?

A. Mr. Colvin and Mr. Clay.

Q. Albemarle Paper Manufacturing Company, possibly known to you as Richmond Container Company?

[Tr. A-268] A. I believe that gentleman's name is Dozier or something like that.

Q. Carolina Container Company?

A. Mr. Holbrook and Mr. Webster.

Q. Continental Can Company?

A. I am not sure of this, whether Mr. Beams was at that time during this period with Continental Can but I would like to go ahead and put this in. Mr. Beams, Mr. Johnson, and Mr. Roy Taylor.

Q. Crown Zellerbach Corporation?

A. Mr. Gordon Clark and Mr. Lee Ross.

Q. Dixie Container Corporation and/or Dixie Container Corporation of North Carolina?

A. Mrs. Gatewood, Mr. Schwind.

Q. Inland Container Corporation?

A. Mr. Roberts and Ed Hogan.

Q. Is that Hogan, H-o-g-a-n?

A. I believe that is the way he spells it.

Q. International Paper Company?

A. Mr. Hugh Reid. I believe that is all.

Q. And the Mead Corporation?

A. Mr. Bob Wainscott and Mr. Dave Bloom.

Q. Miller Container Corporation?

A. Mr. Kyle.

Q. Owens-Illinois Glass Company?

[Tr. A-269] A. Mr. Brittain and Mr. Rosenbaum.

Q. St. Joe Paper Company?

A. None.

Q. St. Regis Paper Company?

A. Petree and Mr. Diggs.

Q. Tri-State Container Corporation?

A. Mr. McDonald.

Q. Union Bag-Camp Paper Corporation?

A. Mr. Faulkner, Mr. Pritchett, Mr. Grimes and Mr. Wulff.

Q. West Virginia Pulp & Paper Company?

A. Mr. Holt.

Q. The Waterbury Corrugated Container Company or Blue Ridge Containers?

A. Mr. Reynolds.

Q. Now, Mr. Elliott, during this period from August 1961 until October 1963 did you at any time attend meetings with your competitors or any meetings at which your competitors were present where there was any discussion of prices?

A. No, sir. Where there was any discussion of prices?

Q. Prices in any way?

A. No, sir.

[Tr. A-538]

Thursday, March 12, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, West Virginia Pulp and Paper Company: Armistead W. Sapp, James Dale Thom.

Other defense counsel appeared as of record with the exception of the following companies, as stated by Mr. McNeill Smith: Miller Container Corporation; Albemarle Paper Manufacturing Company; and Carolina Container Company.

DEPOSITION OF JOSEPH T. PIEMONTE

(PX-27)

[Tr. A-541] Q. Would you tell us about any meetings you may have attended?

A. Well, almost every Fibre Box meeting concerned itself with pricing. Charts were presented, figures, statistics. I don't know of any meetings of Fibre Box Associations which didn't follow that same pattern in the presentation of the area or zone statistics.

[Tr. A-542] Q. In addition to Fibre Box meetings, were there any other meetings?

A. I can recall one other such meeting. I had reference to it when I was sitting here while Mr. Beams spoke. My recollection of that particular event is that this was a meeting in Raleigh—at the Raleigh Hotel in Richmond, Mr. Orcutt indicated that a number of, he had received a number of communications questioning information received from a customer with regard to our prices there, in view of the fact that I believe during this period there was a price increase announced in the press and the question as I recall that Mr. Orcutt indicated to me was the papers say this but there is this information coming from the customer.

What does this mean as far as your company's position is concerned? It seemed to me this was not an overly complicated question. This is what our company had done. He

sort of indicated he would like all these people who were asking these questions to be told at one time. I said certainly, why not. This is the meeting that was referred to. Basically, we indicated yes, the customer was, in effect, was correct and this is what had been done.

Q. Would you fix for us the best you can, Mr. Piemonte, the approximate date of that meeting?

A. Well, I have one way I think I can narrow it down. It was the first time, I believe, that I had seen most of [Tr. A-543] these, met most of these fellows in that area that were competitors. So, I would say it was in the area of 1959. I had been there in the spring of 1959. That is the best of my recollection.

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[Tr. A-694]

Tuesday, March 10, 1964.

APPEARANCES:

For the Plaintiff: Lewis Bernstein, Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, Crown Zellerbach Corporation: Howard T. Milman, Philip S. Ehrlich, Jr., Charles T. Hagan, Jr.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF J. P. TARANTINO, JR.

(PX-34)

[Tr. A-700] Q. Now, when you received such a request, where did you obtain the information that had been requested?

A. From the manager of the division in which the request had reference to.

Q. On these occasions, did the request come direct to you from a competitor or was it forwarded by one of your managers?

A. Well, sir, let me answer it this way. In my tenure as regional manager, I don't think I have been asked, that I can recall now, where I was asked for any specific price level in any account because that information could be obtained from my managers in the various divisions.

Q. I believe, and you correct me if I am wrong, it was your testimony that you have received such requests, possibly infrequently. Am I quoting you right?

A. No, sir, I can't recall anyone asking me for a level. I think maybe I may have made a call for a level.

Q. On such occasions when you requested such information did you request price information on a specific job from a competitor?

A. Yes, sir.

Q. Now, on these occasions, exactly what information did you request, Mr. Tarantino?

A. I requested the last market level in that account. To elaborate just a second, there was some conflicting [Tr.

A-701] information as to the price in that particular account and I requested the level in that particular account and the past market in that particular account.

By Mr. Freeze:

Q. From whom did you request this information?

A. Mr. Talbot of Inland Container Corporation.

Q. From whom else did you request?

A. Whom else did I request information from?

Q. I withdraw that. Going back to Mr. Talbot, regarding what account did you request this information of Mr. Talbot?

A. Snively Groves, Winter Haven, Florida.

Q. Would you mind spelling it first?

A. S-n-i-v-e-l-y.

Q. Where are they located?

A. At Winter Haven, Florida.

Q. Exactly what type of information did you request?

A. The information was misleading from the purchasing agent and the receiving clerk as to the price in the account, and I contacted Mr. Talbot to find out if there had been any change in the market.

Q. Did he give you the information?

A. He notified me that there was no change.

Q. What did you understand that to mean, by no change?

A. It meant that the purchasing agent and the buyer [Tr. A-702] was trying to get a better price.

[Tr. A-703] Q. Mr. Tarantino, what, if anything, did you have to do with the preparation of the Gaylord Manual?

A. Very little, sir.

Q. Were you consulted?

[Tr. A-704] A. Yes, I was consulted, sir.

Q. For what type of information were you consulted?

A. As to whether or not it would be a tool of arriving at a formula for a uniform price within the Gaylord organization. Prior to the Gaylord Manual, our prices were all over the lot, we had no particular way of determining what the price was, and the purpose of the Gaylord Manual was to see if we could not get some semblance of pricing within the organization.

Q. What advice did you give when you were consulted?

A. I was against it, sir.

Q. Would you explain that a little bit further?

A. Yes, sir. I was against it, sir, for the simple reason that what happened did happen. The minute we published the Gaylord Manual, we became sitting ducks, and we lost a great volume of business.

Q. Would you explain that?

A. Yes. We came out and it was a very definite policy that we would adhere to this particular manual throughout the United States. No one had any authority to reduce prices.

Q. When was that policy which you have just outlined promulgated?

A. This was at the time the Gaylord Manual was issued, in 1956.

Q. Was that policy relaxed or changed?

[Tr. A-705] A. We had to, sir, or lose all of our business.

Q. When was it changed?

A. I can't recall the exact time, sir. I do know in the State of Florida I lost about 20 years of business. I would say it lasted for a period of months. I can't tell you exactly, Mr. Freeze, how long it was. I can't recall the exact time that we came back into the market in a competitive way, sir.

Q. How was it changed? Was the formula changed?

A. No; the formula was not changed. We just went out and cut our competition and got the business the same way we lost it.

[Tr. A-4]

Friday, March 6, 1964.

APPEARANCES:

For the Plaintiff: Wharey M. Freeze, John L. Sliney, Antitrust Division, Department of Justice.

For the Defendant, International Paper Company: Henry L. King, Davis Polk, Byron E. Kabot, Arthur Cooke.

Other defense counsel appeared as of record, as stated by Mr. McNeill Smith.

DEPOSITION OF EDWARD AGAR

(PX-4)

[Tr. A-10] Q. Now, in computing a price for a custom-made container do you use a pricing manual or do your subordinates use pricing manuals in computing prices?

A. They do a number of things in computing the price that is quoted to a customer. That is one phase of it, Mr. Freeze, yes. They use an estimating manual.

Q. What is the name of the manual used?

A. We have no name for it other than an estimating manual. It is a manual that is distributed to the estimating departments in our plant.

[Tr. A-11] Q. Who prepared the manual?

A. It is prepared by cost personnel in our headquarters office in New York.

Q. Is this a cost manual or a price manual, would you say?

A. A combination of both, Mr. Freeze. Currently, we are in the process of changing this system. We are going entirely to a cost method. The manual which has been used heretofore is based on cost of operations, the cost of the materials that are fabricated into containers, including a reasonable margin of profit in the cost of the board.

Q. Mr. Agar, my questions will refer to the period from January 1, 1955 to October 14, 1963. Now, during that period—

Mr. King: And also to the Southeast?

Mr. Freeze: Also to the Southeast.

By Mr. Freeze:

Q. Now, during that period; Mr. Agar, did your personnel have in their possession any manuals not prepared by your own company?

A. Yes, sir.

Q. Would you designate what those manuals were either by name or however you referred to them?

A. At one time, Mr. Freeze, we received from our headquarters office copies of the Gaylord Manual that I understand our people up there had received from some of our customers.

[Tr. A-12] Q. Mr. Agar, confining ourselves to the period, 1955 to 1963, would you tell us what years during that period you had in your possession a Gaylord Manual?

A. That I had in my possession; is that your question?

[Tr. A-13] Q. That was in the possession of your personnel charged with pricing, insofar as you know.

A. Surely, Mr. Freeze, they had them at the time I made reference to and that would be six years ago. I don't know whether they still have them. If they don't still have them, I don't know at what period of time they did have them.

Q. Now, will you tell us, please, in your own words, what use was made of the Gaylord Manual by your personnel?

A. Mr. Freeze, when we in our organization would prepare a price, we would first of all go through the mechanics of preparing this estimate sheet. That is a mechanical procedure. You don't want me to go into detail on that, do you?

Q. I would appreciate it if you would.

A. The customer would write our company for a price or our salesman or contact with the customer may personally receive a request for a price. These specifications are given to our estimating department. These specifications are then placed on an estimate sheet and the mechanics of this is from a formula that is in this estimating book, we determine the square footage in each one of the items that is to be priced.

We then have series of dollar and cent factors that represent a given grade of board on the basis of price per thousand square feet. The decimal or this factor is multiplied by the square feet in the container resulting in the

board, the cost of the board or this estimated price of the board per [Tr. A-14] thousand units.

To this is added a series of fabricating materials, the materials necessary to seal the manufacturer's joint, ink to print the container, upkeep of printing dies, any special features that may be incorporated in this particular container such as die cutting or ventilating, the transportation cost from our plant to the customer's plant, the cost of the bundling, wrapping the bundles if it is necessary to wrap the bundles.

That is a concise description of that procedure. The estimate is then presented, along with the customer's inquiry, to the responsible party to name the price that will be quoted to the customer. It is then this individual's responsibility to consider a multitude of factors. He should consider whether or not this particular item is one that is suited to the equipment that we have in the plant.

If we have equipment that is suitable in the plant, he should consider, then, whether this equipment is filled to capacity or whether it is necessary or whether we are looking for extra volume to fill it to capacity.

He would consider the die cut items, as to whether or not we have a cutting die or whether it would be necessary to purchase a cutting die. If it were a printed item, he would have to consider whether or not we had printed dies in good enough shape to print the order in good condition. [Tr. A-15] If not, he would have to consider the cost of the die. He would want to consider the location of our plant in relation to the servicing of the account, whether or not it would be in an area that is regularly serviced by one of our sales personnel or if it was going to be an added expense to service this particular account.

He would consider whether the shipment would be full carload or whether it is less than carload, whether it is a desirable product mix to the rest of our production. Along with all of these considerations, if there was any reason in this individual's mind, for instance, if the account was sold by Gaylord he might then calculate a price or have it calculated on the basis of that manual that he would have had to get that added aid in helping him make up his mind as to the price he would quote the customer.

Q. On any occasions did personnel under you during this

period to the best of your knowledge contact the personnel of your competitors for any information?

A. I don't know of any specific incident where they did but I am sure they did, Mr. Freeze. They may, again I know of no specific instance, no specific incident, but they may have contacted a competitor to determine a past transaction. If the customer had indicated to them that they were buying the container that we were supplying them at a lower price from this competitor. I would like to qualify [Tr. A-16] that in that this would not have been done any time within the last two years, at least the last two years, maybe a little longer.

Q. Have you personally during this period of time ever obtained price information such as board level, on a specific job for a specific customer?

A. I don't know what you mean by board level, Mr. Freeze.

Q. I will withdraw that. Mr. Agar, have you personally obtained any price information on a specific job for a specific customer from any representative of a competitor?

A. Not in the last two years, I have not.

Q. I am speaking of the period from January 1, 1955 to October 14, 1963 and of course I am confining ourselves to the Southeastern United States as previously defined.

A. That would mean then in my case 1957. I would on infrequent occasions, and again I don't remember a specific incident, but I would on infrequent occasions ask a competitor for a past transaction.

Q. Now you indicated that any such occasions occurred prior to June 1962, is that right?

A. Would you repeat that, please?

Q. I understood your testimony to be that any such contacts with competitors were prior to June 1962. Is that correct, did you state that?

[Tr. A-17] A. I said about two years prior, on that, or maybe a little longer, Mr. Freeze.

Q. Mr. Agar, still confining ourselves to the period 1955 to 1963 and to the Southeastern United States, I would like to read you from the complaint a list of defendants and I would like you to indicate which are your competitors in your estimation in the Southeastern United States and during this period, is that clear?

A. No, sir, it isn't.

Q. I am going to read you a list of the defendants in this action by name and ask you which are your competitors in the Southeastern United States?

A. Will you explain what you mean by a competitor? To what extent would you consider competing, to use the expression competitive?

Q. If there is a distinction I would prefer to have you make the distinction. Let me ask you it this way. Would you indicate the ones you consider active competitors? If there are some that you consider minor will you indicate that as I ask you? Is that clear?

A. Yes, sir.

Q. Container Corporation of America?

A. That is a competitor.

Q. Mr. Agar, I note that you have an occasion to use the present and unfortunately I do, too. But I would like to [Tr. A-18] remind you that of course I am speaking of this period January 1, 1955 to October 14, 1963.

If there have been any changes since then I am not asking about those, is that clear?

A. Yes, and perhaps I can correct the record then, that this Statesville plant that I mentioned began operations in 1962 and I believe June of 1962.

Q. Now, Container Corporation of America, I believe you stated that is a competitor, is that right?

A. Yes, sir.

Q. Albemarle Paper Manufacturing Company?

A. Mr. Freeze, I am not acquainted with that company.

Q. Carolina Container Company?

A. Yes, they are a competitor.

Q. Going back to the Albemarle Paper Manufacturing Company for a moment, would the name Richmond Container Company have any significance to you?

A. I have heard of the Richmond Container Company, yes.

Q. Would they be a competitor?

A. I don't know but I would think so, Mr. Freeze.

Q. Now Continental Can Company?

A. Yes, sir.

Q. Crown Zellerbach Corporation?

A. Yes.

Q. Dixie Container Corporation and Dixie Container [Tr. A-19] Corporation of North Carolina?

A. I don't know that company either, Mr. Freeze. But if they are in this area I would say yes, they must be a competitor.

Q. Inland Container Corporation?

A. Yes, sir, they are.

Q. International Paper Company?

Mr. King: That is us.

By Mr. Freeze:

Q. The Mead Corporation?

A. Yes.

Q. Miller Container Corporation?

A. There, again, I don't know the company, Mr. Freeze, but if they are in the area I would say they must be a competitor.

Q. Owens-Illinois Glass Company?

A. Yes.

Q. St. Joe Paper Company?

A. Yes.

Q. St. Regis Paper Company?

A. Yes.

Q. Tri-State Container Corporation of Elizabethton, Tennessee, if that helps any?

A. I don't know.

Q. West Virginia Pulp & Paper Company?

[Tr. A-20] A. Yes.

Q. Weyerhaeuser Company?

A. Yes.

Q. The Waterbury Corrugated Container Company?

A. I never heard of it.

Mr. Kenney: Mr. Freeze, I don't like to be left out of this. You didn't ask about Union Bag-Camp.

By Mr. Freeze:

Q. Union Bag-Camp Paper Corporation?

A. Yes.

Q. I would like to ask you, Mr. Agar, if you are familiar with a concern known as the Old Dominion Box Company?

A. What was the question?

Q. Have you ever heard of a concern known as the Old Dominion Box Company?

A. I have heard of it, yes.

Q. Would you know from your own recollection whether your company has competed with that company during the period 1955 through 1963?

A. I don't know, Mr. Freeze.

Q. Now will you tell us please, Mr. Agar, in connection with giving or receiving any price information from competitors which persons in your own organization would normally do that, or did normally do that for the period which you state?

A. None of them would have done it in the last two years [Tr. A-21] or so.

Q. Prior to that time?

A. It would have been the plant managers and, as I indicated before, on infrequent occasions I would have performed that function, myself.

Q. Now, Mr. Agar, I would like to go through the same list of defendants named in the complaint and ask you to indicate, as I read each one, those persons, if any, with whom you have given or from whom you have received any price information during the period 1955 to 1963 in reference to prices on specific jobs. First, is that clear? Is my question clear?

A. I would like you to read it again.

Q. I am going to list to you the same list of defendants in this action that I read to you before. What I would like you to do is to indicate any persons with each one of these companies with whom you have given or received any price information on a specific job during the period of 1955 to 1963 in the Southeastern United States. Is that clear?

A. May I make a statement?

Q. Yes.

A. I don't remember any particular incidents at all.

Q. I am not asking for incidents. I am asking for persons you contacted.

A. I don't remember any persons but I will be glad to [Tr. A-22] answer you. I have not done it for over two years and it was infrequent. This is only a small part of my responsibility.

Q. You would not be able to remember any persons with the companies?

A. I would be glad to try but I don't think so.

Q. I will run down the names anyway. Container Corporation of America?

Mr. King: Are you asking for names of individuals in that company?

Mr. Freeze: Yes.

The Witness: I would know people in that company but that is not your question, is it?

By Mr. Freeze:

Q. Do you recall any instance in which you have given or received any price information during this period?

A. I remember no specific incident.

Q. Albemarle Manufacturing Company or Richmond Container Company?

A. None to my knowledge.

Q. Carolina Container Company?

A. I don't remember such an incident.

Q. Continental Can Company?

A. I don't remember any such incident.

Q. Crown Zellerbach Corporation?

A. Again, I don't remember any specific incident.

[Tr. A-23] Q. Dixie Container Corporation or Dixie Container Corporation of North Carolina?

A. I don't know that company at all, Mr. Freeze.

Q. Inland Container Corporation?

A. Again, I remember no specific incident.

Q. The Mead Corporation?

A. The same answer, please.

Q. Miller Container Corporation?

A. I don't know them.

Q. Owens-Illinois Glass Company?

A. I remember no specific incident.

Q. St. Joe Paper Company?

A. The same answer.

.

Q. Mr. Agar, I would like to ask you, please, if you recall any meetings you have attended at which personnel employed by your competitors were present.

A. Mr. Freeze, in the last couple of years, I think I have

been at possibly one or possibly two Fibre Box meetings. Prior to that time, I attended a little more frequently and there were the same competitors present, of course at such Fibre Box meetings.

Q. Do you recall any meetings other than Trade Association meetings?

A. Well, there is a corrugated container institute [Tr. A-24] located in Florida for the development of containers, the conversion of existing packages to corrugated for shipment of fresh fruit and produce and I have attended some of those meetings but not recently.

Q. Do you recall any meetings, Mr. Agar, when you have had any discussions with representatives of your competitors regarding pricing?

A. Would you say that one again please?

Q. Yes. Do you recall any meetings you have attended at which there were representatives of your competitors present at which there was discussion of prices?

A. Well, Mr. Freeze, I don't remember specifically, but I wouldn't doubt but that at some one of these meetings that prices were discussed in a general sense.

Q. Have there been any occasions when you have discussed with a competitor a price on a specific job at any of these meetings?

A. Of course, I wouldn't have the last two years and again I don't remember specifically, it is possible that I did, again, it is possible that I did not.

Q. Mr. Agar, have you ever heard of a manual known as the Old Dominion Manual?

A. I have heard of it.

Q. To the best of your knowledge, has a copy of that manual ever been in the possession of your own personnel? [Tr. A-25] A. Not to my knowledge.

Q. You previously made reference to the Gaylord Manual. Is that the only manual, to the best of your recollection, that has been in the possession of you or your subordinate other than your own manual?

A. It is, to the best of my knowledge, Mr. Freeze, yes.

Q. Now, Mr. Agar, was it your testimony that during the period of 1955 through 1963, there were occasions when you personally had given or received a price from a competitor although you cannot, maybe, remember a specific instance?

Was that your testimony and I will repeat that if you did not understand.

A. I understood it but did you mean to include on a past transaction?

Q. Any giving or receiving—

A. My testimony was that I have done that infrequently prior to two years ago, on the basis of a past transaction.

Q. When you were asked for such price information, where did you obtain that information within your own company to supply?

A. I would have to get it from the plant manager.

Q. You would not have files of your own which would contain that information?

A. No, sir.

Q. How did you get it from the plant manager? Did you [Tr. A-26] have to call him up by phone?

A. Yes, sir.

Q. Now, the information that would be supplied would be the most recent price, would it? Would it be the most recent price at which you had sold?

A. Our last transaction, yes, sir.

Q. I would like to ask you if, during this period, you had quoted on a job but for some reason, perhaps, had not made the sale, would you still supply this information upon request?

A. Not to belabor the point we would not have done it at all in the last two years. Prior to that time and I would think about six years ago, we were instructed by our company counsel to discuss only past transactions. It was my understanding, at that time, that a past transaction was the offer of a supplier and the acceptance of a customer and once that was done it was a completed transaction and if it was not in that status and during this period of time, we would not have given the information.

Q. Speaking from your own personal experience, Mr. Agar, when such a request for information was made of you, did you supply accurate information to the competitor requesting it?

A. This was infrequent, Mr. Freeze, but yes, we did give accurate information.

Q. Is it your testimony that at times you did request this

type of information from your competitors? Is that clear? [Tr. A-27] A. It was clear but I didn't get the first part.

Q. I am just giving the reverse situation. I merely ask, is it your testimony that you did at times request and receive from competitors price information on specific jobs?

A. From a past transaction, yes, sir, that is right.

FOR DEFENDANTS:

Q. Now, speaking of the Southeastern territory, can you tell us how much change there is from year to year in your accounts? Is there a big fluctuation, not in number of accounts but in the different accounts or is it pretty much constant?

A. You have reference to the industry or to our company?

Q. Your company.

A. Fortunately for me, Mr. Freeze, our sales are greater today than they were several years ago primarily due to the fact that we have had added facility in my area prior to ten years ago.

Q. Mr. Agar, I was not asking whether your business was on the increase or whether you were picking up new customers. I was merely asking in general, is there a fluctuation in customers from year to year, names of customers, or is it fairly constant?

A. Certainly, it fluctuates. We have a customer today that may be bankrupt next year or we may lose him to some new competitor. By the same token, there may be a new industry in [Tr. A-28] our area and we may be successful in listing that as a new account. We may also be successful in taking an account away from a competitor. We may lose one to a competitor. But the frequency, I could not estimate that. I would say we have had customers that we have had on our customer lists since 1927. Some are brand new.

Q. Mr. Agar, I would like to ask you, to the best of your knowledge in this industry, as known to you in your own company operations, do most of the customers buy from several companies at the same time or inclined to give their business to one company?

A. They buy, generally speaking, from my experience, from more than one supplier.

Q. Mr. Agar, before the break, you made reference to a change in policy by your company in connection with giving or receiving price information on specific jobs. Would you tell us, please, were your competitors notified of this change?

A. I don't know.

Q. How did you effect the change in your own operations?

A. If I were to receive—may I go back and tell you what the change was? I think that would be helpful.

Q. Please do.

A. I was notified by one of my superiors approximately [Tr. A-29] two years ago or, I would say, maybe a little longer than that, that we were no longer to talk to any of our competitors about any prices.

Q. Do you recall the name of the superior who so informed you?

A. Yes. It was Mr. W. S. Snyder.

Q. What was his position with the company at that time?

A. He was a Vice President.

Q. Would that be a Vice President specifically connected with container operations?

A. He was in charge of the container operations, yes.

Q. How was this communicated to you, by letter or personally?

A. By telephone, Mr. Freeze.

Q. Was any reason given you by him?

A. I don't remember exactly the way this message was given to me, but I recall that there was a question in the minds of the Department of Justice as to the legality of discussing past transactions with competitors, and his instructions to me were, I believe, based on that.

Q. Now, Mr. Agar, under what circumstances did you personally make these requests for information rather than your plant managers make the request?

A. Well, Mr. Freeze, I don't remember a specific situation. I would suppose that some one of our sales people [Tr. A-30] had been given information by a customer that

our price was too high and that we must meet a competitive price in order to maintain our position. For what reason I don't know, but a plant manager may have related this to me, and it may be that on the basis of that that I would have called a competitor to verify this information we had received from the customer.

Q. I will ask you again, under what circumstances, Mr. Agar, would you have any contacts with your competitors with any reference to specific jobs rather than having this done by your plant managers?

Mr. King: I believe he just answered the question, but I don't mind his re-stating it.

The Witness: No. I don't mind re-stating it. I thought I had answered the question. I intended to answer the question.

By Mr. Freeze:

Q. Will you answer it again?

A. I will. I don't remember specifically any instance, but I would think that where this would happen, and this, remember, has not happened in the last couple of years, but I would think that where it happened would be a situation where a customer had reported to one of our sales people that our price was no longer competitive, that they were able to buy [Tr. A-31] containers cheaper from a competitor and that it would be necessary for us to become competitive to retain our business.

Possibly the plant manager then talked to me and for some reason that I can't recall I may have approached the competitor, myself.

[Tr. A-32] Q. Now, Mr. Agar, I believe you stated that the information which you would furnish a competitor or did furnish a competitor upon request was the most recent price at which you had sold the specific customer mentioned, is that correct?

A. Yes.

Q. Now then—

Now when you received this information from a com-

petitor did you ask the competitor if an actual sale had been consummated?

[Tr. A-33] A. From the time that I referred to, approximately six years ago when our counsel explained to us the type of conversation we were permitted with competition, my question on those occasions would be—this is my impression, I don't remember this exactly—but my impression ~~would be that~~ I have said we were told by X company that we are no longer competitive, that the buying has accomplish from you at a particular price. Would you please verify that this is true?

This is the best I can remember that I would have said that, asked that question.

Q. Were there any instances, Mr. Agar, when you either received this information or gave this information except in response to a request? I will withdraw that.

Were there any occasions when you ever gave this information except on request?

A. Not to my knowledge, Mr. Freeze.

Q. Were any occasions when you received it without having made a request?

A. On rare occasions—I haven't first—yes, I think I have, too—on rare occasions over the past number of years we may have received a price list in the mail that we didn't request and in accordance with our company policy we were to return it to the sender with a letter of transmittal that this particular price list was not requested.

[Tr. A-34] Q. Will you define what you mean by a price list? Would it be a price list for some standard item?

A. Yes, sir.

Q. Which type of containers do you make as your standard?

A. Well, sanitary cans, Mr. Freeze, are a standard type container. Containers for motor oil are standard type container. There are other commodities that are pretty much standard such as egg cases. There are stock boxes, there might possibly be a stock box list.

STIPULATION AS TO CERTAIN PROOF

The plaintiff, United States of America, and the defendants hereinafter named, by their respective attorneys, hereby stipulate and agree solely for the purpose of this proceeding and any appeal therefrom, but not otherwise, that:

(a) Subject to the limitations hereinafter set forth, the Statement of Proof attached hereto as Exhibit I (hereinafter referred to as "Statement") is limited and shall be deemed to constitute as to each defendant a stipulation by such defendant only with respect to its own conduct where the defendants are referred to in the aggregate as, for example, Paragraphs 4 and 5 of said Statement, and otherwise of only those factual matters, occurrences or conduct which are designated therein as relating to or as being the conduct of such designated defendant, and no defendant shall by reason hereof be deemed to have made any stipulation with respect to any factual matters, occurrences or conduct of or pertaining to any other defendant or to have any knowledge thereof; provided that it is

stipulated and agreed by each of the parties solely for the purposes of this action and any appeal therefrom, and not otherwise, that the matters set forth in the Statement shall be deemed proved;

(b) No party shall by reason of this stipulation be deemed to have waived any privilege or agreement as to confidentiality respecting any thing or matter not set forth in the Statement;

(c) No defendant shall by reason of this stipulation be deemed to have waived its right to object to the admission in evidence of all or any part of the Statement, or of the depositions or documents referred to in subparagraph (d) hereof, on any and all grounds;

(d) Nothing herein shall prevent the defendants, or any of them, from introducing additional evidence, whether or not pertaining to the matters set forth in the Statement, in explanation of or supplemental to the matters as set forth therein, and the plaintiff will offer no additional evidence in this action, other than the depositions heretofore taken in this action and the documents listed in Exhibit II, except by way of rebuttal to such additional or supplemental evidence offered by one or more of the defendants;

(e) Nothing herein shall prevent any party hereto from correcting the Statement if typographical, mathematical, or other such error is shown to have been made therein;

(f) This stipulation shall not be filed as or become a part of the record in this cause until the commencement of the trial on the merits and, in case of a settlement of this proceeding without a trial on the merits to Final Judgment, this stipulation shall be void and of no effect;

(g) No party, by entering into this stipulation, shall be deemed to have made any representation or admission as to any of the matters set forth in the Statement for the purpose of any other or different action, suit or proceeding to which any of them may be or hereafter become parties,

regardless of whether such action, suit or proceeding is between the parties hereto, or any of them, or between any one or more of the parties hereto and any other person or persons;

(h) The matters contained in the Statement are limited to the Southeastern United States as defined in the complaint in this action.

Dated: August 12, 1964

(s) LEWIS BERNSTEIN

(s) WHAREY M. FREEZE

(s) JOHN N. SLINNEY

(s) WILLIAM H. MURDOCK

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EXHIBIT I
STATEMENT OF PROOF

1. For purposes of brevity the defendants may be referred to herein by the following abbreviated names:

Container Corporation of America.....	Container Corporation
Albemarle Paper Manufacturing Company..	Albemarle
Carolina Container Company.....	Carolina
Continental Can Company, Inc.....	Continental
Crown Zellerbach Corporation.....	Crown Zellerbach
Dixie Container Corporation.....	Dixie
Dixie Container Corporation of North Carolina*	Dixie of North Carolina
Inland Container Corporation.....	Inland
International Paper Company.....	International
The Mead Corporation.....	Mead
Miller Container Corporation.....	Miller
Owens-Illinois Glass Company.....	Owens-Illinois
St. Joe Paper Company.....	St. Joe
St. Regis Paper Company.....	St. Regis
Tri-State Container Corporation.....	Tri-State
Union Bag-Camp Paper Corporation.....	Union-Camp
West Virginia Pulp and Paper Company.....	West Virginia
Weyerhaeuser Company	Weyerhaeuser

2. In the trade the following defendants were sometimes known by the following names:

Albemarle, after September 9, 1959 only, as "Richmond," or "Richmond Container";

Container Corporation, after November 15, 1960 only, as "Mengel" and only for its Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., Lexington, Ky., Louisville, Ky., and Winston-Salem, N. C. locations;

* Dixie of North Carolina was a controlled subsidiary of Dixie which owned 80% of its capital stock. The officers of the two corporations were identical with the exception of the Assistant Secretary.

Continental, after October 26, 1956 only, as "Gair" or "Robert Gair";

Crown Zellerbach, after November 30, 1955 only, and for its Gaylord corrugated container division only, as "Gaylord", or "Gaylord Container";

Owens-Illinois, after October 4, 1956 only, as "National" or "National Container";

St. Regis, after August 29, 1959 and at its Atlanta, Ga. location only, as "Atlanta Container" or "Atlanta Container Company", and after January 4, 1960 and at its Birmingham, Ala. location only, as "Nifty" or "Nifty Manufacturing Division";

Union-Camp, after December 1, 1959 and at its Jamestown, North Carolina location only, as "Highland" or "Highland Container";

West Virginia, after September 30, 1957 only, as "Hinde & Dauch";

Weyerhaeuser, after May 1, 1957 only, as "Kieckhefer" or "Kieckhefer-Eddy".

Container Corporation acquired a stock interest in Mengel Co. in 1954 and continued to increase its holdings of Mengel common stock, owning approximately 69% by December 1955 and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960 Mengel Co. was merged into Container Corporation.

Inland acquired ownership and control of the Anderson Box Co., Inc. in December of 1959.

Union-Camp in March of 1959 acquired most of the stock of Highland Container Company of Jamestown, N. C.; in September 1959 it completed its acquisition of 100% of the stock of Highland and on December 1, 1959 Highland was merged into Union-Camp. From March 1959 until it was so merged, the Highland Jamestown plant was controlled by Union-Camp but continued to be operated by Highland management.

West Virginia acquired substantially all of the stock of Hinde & Dauch Paper Company in 1953 and controlled it until it was merged into West Virginia on September 30, 1957.

3. The facts set forth in each of the following paragraphs occurred or existed within the period from January 1, 1955, to October 14, 1963, within the Southeastern United States (which is defined in the complaint as Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky); except that the following defendants were not engaged in the corrugated container business in the Southeastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959
Continental	October 26, 1956
Crown Zellerbach	November 30, 1955
Dixie of North Carolina	-March 1, 1959
Mead	December 27, 1956
Owens-Illinois	October 4, 1956
St. Regis	October 2, 1958
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch)
Weyerhaeuser	May 1, 1957

4. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular course of its business.

5. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured.

6. Annual dollar sales of corrugated containers for each of the defendants except Albemarle for each year since and including 1961 have been as follows:

Container Corporation in excess of \$28 million;
Carolina in excess of \$5 million;
Continental in excess of \$11 million;
Crown Zellerbach in excess of \$21 million;
Dixie in excess of \$4 million;
Dixie of North Carolina in excess of \$1½ million;
Inland in excess of \$17 million;
International in excess of \$7 million;
Mead in excess of \$19 million;
Miller in excess of \$2 million;
Owens-Illinois in excess of \$15 million;
St. Joe in excess of \$4 million;
St. Regis in excess of \$10 million;
Tri-State in excess of \$6 million;
Union-Camp in excess of \$18 million;
West Virginia in excess of \$10 million;
Weyerhaeuser in excess of \$7 million.

7. Annual dollar sales of corrugated containers for Albemarle since and including the fiscal year ending April 30, 1962, have been in excess of \$2 million.

8. Most of the corrugated containers sold by each of the defendants in the regular course of its business were manufactured by it upon customer order and in accordance with the specifications prepared by or for the particular customer so ordering as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this paragraph.

9. In seeking business for the manufacture and sale of corrugated containers although not necessarily at all times or in all areas or for all purchasers, varying from defendant to defendant:

Container Corporation was in competition with each of the other defendants;

Albemarle was in competition with the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Joe, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

Carolina was in competition with the following defendants: Container Corporation, Albemarle, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

Continental was in competition with each of the other defendants;

Crown Zellerbach was in competition with each of the other defendants;

Dixie was in competition with the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Miller, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

Dixie of North Carolina was in competition with the following defendants: Container Corporation, Carolina, Continental, International, Mead, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

Inland was in competition with each of the other defendants;

International was in competition with each of the other defendants;

Mead was in competition with each of the other defendants;

Miller was in competition with each of the other defendants;

Owens-Illinois was in competition with each of the other defendants;

St. Joe was in competition with the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Owens-Illinois, St. Regis, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

St. Regis was in competition with the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Owens-Illinois, St. Joe, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

Tri-State was in competition with the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Union-Camp, West Virginia and Weyerhaeuser;

Union-Camp was in competition with each of the other defendants;

West Virginia was in competition with each of the other defendants; and

Weyerhaeuser was in competition with each of the other defendants.

10. Most purchasers of corrugated containers generally purchased their containers from two or more of the defendants concurrently.

11. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information.

12. As hereinafter used, the words "most recent price" mean either the most recent price charged a specific customer in an actual sale or the price most recently quoted under the circumstances described in Paragraph 34 hereof.

13. Possible sources for obtaining the most recent price to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular

purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales or from the particular purchaser involved.

14. On those occasions when Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, Miller, Owens-Illinois, St. Joe, St. Regis, Tri-State, West Virginia and Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers.

15. From July 16, 1963, to October 10, 1963, Union-Camp did not communicate with other manufacturers of corrugated containers. Except for that period, on those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers.

16. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers.

17. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to

ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers.

18. On those occasions when, prior to June 1961, Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers such price information was usually requested from a defendant then supplying that customer with corrugated containers.

19. When Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, Miller, Owens-Illinois, St. Joe, St. Regis, Tri-State, West Virginia and Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

20. Except for the aforesaid period from July 16, 1963 to October 10, 1963, Union-Camp, when it received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually furnished the information requested.

21. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested.

22. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested.

23. Prior to June 1961, when Mead received a request from another defendant for the most recent price to a

specific customer for corrugated containers, Mead usually furnished the information requested.

24. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales managers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961 and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers.

25. Since approximately June 1962, it has been International's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers.

26. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers.

27. In the Fall of 1961, Mead Containers Division of The Mead Corporation, at the request of its Southeastern Regional Sales Manager, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally.

28. Thereafter, the Southeastern Regional Sales Manager for Mead Containers Division, who had jurisdiction over Florida, Georgia and Tennessee, relaxed said prohibi-

tion to some extent to District Sales Managers under his supervision.

29. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants as set forth in Paragraphs 18 and 23.

30. In April or May of 1962, the Atlanta, Georgia, District Sales Manager for Mead Containers Division, attended a meeting at Mead's head office in Dayton, Ohio, at which Mead's policy, as enunciated in the directive referred to in Paragraph 26, was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced.

31. When a defendant requested or furnished price information as described in Paragraphs 14 through 30 from or to other defendants the same was done by each in the normal conduct of its business. The extent and frequency with which such information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants.

32. In the circumstances set forth in Paragraphs 14 through 31 hereof:

The defendant Container Corporation requested and/or furnished price information as described in Paragraph 16 from and/or to each of the other defendants;

The defendant Albemarle requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Dixie, Inland, Mead, Miller, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Carolina requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Albemarle, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Continental requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Albemarle, Carolina, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Crown Zellerbach requested and/or furnished price information as described in Paragraph 14 from and/or to each of the other defendants;

The defendant Dixie requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Miller, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Dixie of North Carolina requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Miller, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Inland requested and/or furnished price information as described in Paragraph 14 from and/or to each of the other defendants;

The defendant International requested and/or furnished price information as described in Paragraph 17 from and/or to the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, Mead, Miller, Owens-Illinois, St. Regis, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Mead requested and/or furnished price information as described in Paragraph 18 from and/or to each of the other defendants;

The defendant Miller requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Owens-Illinois, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Owens-Illinois requested and/or furnished price information as described in Paragraph 14 from and/or to each of the other defendants;

The defendant St. Joe requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia and Weyerhaeuser;

The defendant St. Regis requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Carolina, Continental, Crown Zellerbach, Inland, International, Mead, Owens-Illinois, St. Joe, Tri-State, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Tri-State requested and/or furnished price information as described in Paragraph 14 from and/or to the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Union-Camp, West Virginia and Weyerhaeuser;

The defendant Union-Camp requested and/or furnished price information as described in Paragraph 15 from and/or to the following defendants: Container Corporation, Albemarle, Carolina, Continental, Crown Zellerbach, Dixie, Dixie of North Carolina, Inland, International, Mead, Miller, Owens-Illinois, St. Regis, Tri-State, West Virginia and Weyerhaeuser;

The defendant West Virginia requested and/or furnished price information as described in Paragraph 14 from and/or to each of the other defendants; and

The defendant Weyerhaeuser requested and/or furnished price information as described in Paragraph 14 from and/or to each of the other defendants.

33. When requesting from or furnishing to another defendant price information as described in Paragraphs 14 through 31 each defendant from time to time made long distance phone calls.

34. In most instances when a defendant requested or furnished another defendant information as to its price to a specific customer such information related to a price charged the customer in an actual sale but on occasion some of the defendants requested and/or furnished information as to prices quoted upon which an actual order had not at that time been received from the customer.

35. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. Such manuals also contained various costs and/or charges relating to the actual manufacture of corrugated containers. Such manuals also contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These

manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals", "pricing manuals", "pricing procedures" or "estimating manuals". Whenever these manuals are hereinafter referred to, they are specifically described as "internal manuals".

36. At various times, manuals containing formulae and schedules of charges from the application of which a price estimate could be computed for most containers manufactured by them were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Division) and Inland. Each of said manuals was made available to other manufacturers of and customers for corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Paragraph.

37. The manuals were variously referred to in the trade, among other things, as "price lists", "estimating and pricing manuals" or "estimating manuals".

38. With respect to corrugated containers, the basic material used in the manufacture thereof was corrugated container board consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard.

39. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength.

40. In the trade the charge described in Paragraph 39 hereof was variously called, among other things, an "area

charge", "base", "base price", "board base price", "board factor", "multiplier", "level" and "board level".

41. The grade of container board most commonly used in the manufacture of corrugated containers was known in the business as "200 lb. test" single wall container board made with 42 lb. liners. The term "200 lb. test" is a measure of its bursting strength, and the phrase "42 lb. liners" refers to linerboard weighing 42 pounds per 1,000 square feet, used in the two outer layers of the corrugated "sandwich".

42. The manuals also contained various charges relating to the actual manufacture of corrugated containers.

43. Before the actual manufacturing process can begin, it is necessary in the manufacture of corrugated containers to set up the production machinery to accommodate the particular specifications, such as style, dimensions, printing, kind of joint, etc., for each individual order and type of corrugated container.

44. The manuals also contained a schedule of charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications.

45. The most common style of corrugated container is known as a "regular slotted carton" and has a joint on one side closed with tape, staples, or glue.

A. The first item in the schedule of set-up charges appearing in "Estimating Manual National Container Corporation of the Carolinas", effective February 17, 1955, is for "taped or stitched containers", which include regular slotted cartons, full overlap cartons, half-slotted cartons, and partial overlap cartons, and is \$25.00. The charge per 1,000 sq. ft. for 200 lb. test single wall container board in said "estimating manual" is \$12.50.

B. The first item in the schedule of set-up charges appearing in "Old Dominion Box Company Price List", effective October 15, 1956, is for "taped or stitched containers", which include regular slotted cartons, full overlap cartons, half-slotted cartons, and partial overlap cartons, and is \$15.00. The charge per 1,000 sq. ft. for 200 lb. test single wall container board in said "price list" is \$12.35.

C. The first item in the schedule of set-up charges appearing in "Gaylord Container Corporation Division of Crown Zellerbach Corporation Pricing Manual", effective March 1, 1957, is for regular slotted cartons, full overlap cartons, half-slotted cartons, taped or stitched, not flap cut, and is \$15.00. The charge per 1,000 sq. ft. for 200 lb. test single wall container board in said "pricing manual" is \$12.35.

D. The first item in the schedule of set-up charges appearing in "Inland Container Corporation Estimating and Minimum Pricing Manual", effective August 1, 1957, is for regular slotted cartons, full overlap cartons, half-slotted cartons, taped or stitched, not flap cut, and is \$15.00. The charge per 1,000 sq. ft. for 200 lb. test single wall container board in said "estimating and minimum pricing manual" is \$13.00.

Each of the above manuals was prepared and published by the company whose name appears in the title thereof and was made available by that company to other manufacturers of and customers for corrugated containers.

46. On June 15, 1959, Inland Container Corporation issued an "Inland Container Corporation Estimating and Pricing Manual", effective July 1, 1959, voiding the "Inland Container Corporation Estimating and Minimum Pricing Manual" dated August 1, 1957, and which, among other things, changed the set-up charge for regular slotted cartons, full overlap cartons, half-slotted cartons, taped or stitched, not flap cut, to \$25.00. On August 1, 1961, Inland Container Corporation issued an "Inland Container Corporation Estimating and Pricing Manual", effective August

15, 1961, voiding the "Inland Container Corporation Estimating and Pricing Manual" dated July 1, 1959, and which, among other things, changed the charge per 1,000 sq. ft. for 200 lb. test single wall container board to \$14.30. Pages 7 and 8 of the Inland Manual effective August 15, 1961, containing that manual's schedule of area charges or board levels, were voided effective March 1, 1962, by new pages 7 and 8 prepared and made available by Inland to other manufacturers of and customers for corrugated containers. The aforesaid pages 7 and 8 effective March 1, 1962, contained a schedule of area charges or board levels higher in each instance than those appearing on the voided pages, and the area charge per 1,000 sq. ft. for 200 lb. test single wall container board was increased from \$14.30 to \$15.00.

47. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs and profitability and the desirability of such business. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(a) By application of the formulae and schedules of charges set forth therein;

(b) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein;

(c) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(d) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(e) By any combination of the applications referred to in subparagraphs (b), (c) and (d) hereof; or

(f) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several defendants, and among the plants and customers of individual defendants.

48. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant having an internal manual or internal manuals has used such internal manuals in approximately the same ways and under the circumstances described in Paragraph 47, and often along with one or more of the manuals referred to in Paragraph 47. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants.

49. If the same board level and set-up charge were used in computing a manual price for a corrugated container of particular specifications, there would be in most instances little difference in the results of the computation, regardless of which manual was used in making the computation.

50. The actual price charged for corrugated containers was usually referred to in the trade as the "end price", which in most instances was different from any manual price referred to in Paragraph 49.

51. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants such information was furnished only in terms of an end price.

52. On those occasions when a defendant furnished to another defendant upon his request the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the request involved more than a few different container items.

53. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board.

54. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially the same; or (3) there had been a change in raw material costs or other significant costs.

55. Prior to July 1, 1959, each defendant included in its prices to many of its customers a set-up charge of \$15.00 for regular slotted cartons. Thereafter, and continuing into 1960, each defendant sought to increase its set-up charge for such cartons by \$10.00 to many of its customers. By July 1960 each defendant included in its prices to many of its customers a set-up charge of \$25.00 for regular slotted cartons. However, throughout such period the amount of such set-up charges varied among the several defendants and among the plants and customers of individual defendants, and in many instances the amount of set-up charge sought or received, if any, was less than the aforesaid amounts.

56. On various dates between July 24, 1961 and August 31, 1961, Container Corporation, Continental, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers and succeeded in increasing prices to some of its customers in varying amounts.

57. During the early part of 1962, the price of liner-board, which is used by each defendant to manufacture corrugated containers, was increased and as a result each of the defendants attempted to increase prices in varying amounts to some corrugated container customers.

58. The Fibre Box Association, hereinafter called the "Association", was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers.

The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky and was known as the Southeastern Group. The Eastern Division of the Association comprised Zones 10 and 11 and also Zones 1, 2, 3 and 4 in the Northeast and Middle Atlantic United States.

59. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association, a weekly summary showing, in square feet, the quantity of corru-

gated and solid fibre shipments and the dollar value of these shipments.

From this data the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These division and zone price trends as well as aggregate shipment figures for each member were issued to each member approximately ten days after the close of each week and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member.

Due to the variety of the materials used and the great variety in construction of the containers as well as differences in the "mix" due to seasonal factors, the indexes referred to above showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold.

60. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Paragraph 59 hereof. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the pro-

gram agenda and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting.

61. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished price information of the character referred to in Paragraph 14 hereof when requested by a representative of another defendant.

62. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group. Representatives of Miller attended one or more Association meetings of Zones 10 and/or 11 and a representative of St. Joe attended one such meeting as guests of the members.

63. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly.

64. In or about May or June 1959 there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation, upon entering the meeting announced that their company was increasing its set-up charge from \$15.00 to \$25.00 and thereupon left the meeting.

65. On July 20, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller, and Owens-Illinois were present and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges.

66. A meeting of representatives of some corrugated container manufacturers was held in August 1959, at the Raleigh Hotel in Richmond, Virginia. David B. Orcutt, West Virginia's District Sales Manager for the Richmond District, invited to this meeting a representative of each manufacturer that he believed was then supplying corrugated containers to Hygrade Packing Corporation. In response, representatives of Continental, Dixie, Miller, and Richmond Container Corporation, which companies, with the exception of Continental, were then supplying corrugated containers to Hygrade, met at the Raleigh Hotel, as aforesaid. Sometime previously West Virginia had publicly announced a general increase in its corrugated container prices of approximately 10 per cent. Some of Hygrade's suppliers named above had been advised by Hygrade that West Virginia had reduced its prices to Hygrade and had inquired of West Virginia as to whether that report was correct in view of West Virginia's previously announced price increase policy. The meeting was called to answer these inquiries at one time. At this meeting Mr. Piemonte explained to those present that West Virginia had not changed its previously announced general policy but that when it had negotiated with Hygrade it was West Virginia's good judgment that its price to that customer should be reduced 5 per cent. No statement was made at the meeting as to what any other suppliers of corrugated containers to that customer intended to do.

67. Early in 1956 corrugated container manufacturers from the Baltimore area solicited business in the Eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the Eastern part of Virginia were then paying for similar corrugated containers.

68. Miller, Dixie, Robert Gair Company prior to its acquisition by Continental, Richmond Container Corporation prior to its acquisition by Albemarle, and possibly

West Virginia endeavored to ascertain the localities in Eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. These matters were discussed by telephone and at a meeting.

69. Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albe-marle) each adopted lower nominal board factors for Eastern Virginia than for Western Virginia.

70. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions therefore no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like containers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision.

EXHIBIT II

<u>Document Number</u>	<u>Number of Pages</u>
CCC—2977	1 page
CRO—11915	1 page
UNI—03416-7	2 pages
UNI—03493	1 page
MIL—157	1 page
DIX—60	1 page
CCC—2940	1 page
CCC—2971	1 page
CCC—2994-5	2 pages
UNI—03352-4	3 pages
UNI—03350	1 page
CCC—2895-7	3 pages
MEA—00744	17 pages with same number
UNI—00178-82	5 pages
DIX—53	1 page
WES—269	18 pages with same number
RIC—46	10 pages with same number
MEN—9-106	1 page
MEN—9-107	10 pages with same number
MIL—119	1 page
MIL—114	1 page (reverse side of MIL—119)
DIX—72	1 page
OWE—367	
OWE—370	
OWE—374	

FURTHER STIPULATION AS TO CERTAIN PROOF

The plaintiff, United States of America, and the defendants herein, by their respective attorneys, hereby stipulate and agree solely for the purpose of this proceeding and any appeal therefrom, but not otherwise, that:

(a) Attached hereto are the following exhibits:

EXHIBIT I—Further Statement of Proof

EXHIBIT II—Schedule Relating to Documents

EXHIBIT III—Statistical Tables

(b) The matters set forth in Exhibits I and II shall be deemed proved and the plaintiff shall make no objection to the admissibility in evidence of documents listed in Exhibit II or the statistics and other data set forth in Exhibit III other than objections of relevancy and materiality;

(c) No party shall, by reason of this Stipulation, be deemed to have waived any privilege or agreement as to confidentiality respecting any thing or matter not set forth in the Exhibits hereto;

(d) Nothing herein shall prevent any party from correcting any of the exhibits to this Stipulation, if typographical, mathematical, or other such error is shown to have been made therein;

(e) This Stipulation shall not be filed as or become a part of the record in this cause until the commencement of the trial on the merits and, in case of a settlement of this proceeding without a trial on the merits to final judgment, this Stipulation shall be void and of no effect;

(f) No party, by entering into this Stipulation, shall be deemed to have made any representation or admission as to any of the matters set forth in the exhibits for the purpose of any other or different action, suit or proceeding to which any of them may be or hereafter become parties, regardless of whether such action, suit or proceeding is between the parties hereto, or any of them, or between any one or more of the parties hereto and any other person or persons;

(g) The matters contained in Exhibit I hereto are limited to the Southeastern United States as defined in the Complaint in this action and, irrespective of tense used, unless otherwise expressly stated therein, refer to the entire period from January 1, 1955 to October 14, 1963;

(h) Any prior stipulation between the parties to the contrary notwithstanding, no party shall offer any evidence in this action other than:

(1) The Stipulation as to Certain Proof, dated August 12, 1964, and Exhibit I thereto;

(2) The Stipulation as to Certain Documents, dated April 22, 1965, and the Schedule attached thereto, and the Stipulation dated April 22, 1965;

(3) Such of the documents listed in the Schedule attached to the aforesaid Stipulation as to Certain Documents as plaintiff shall designate in writing not less than 60 days prior to the date fixed for trial;

(4) Such parts of the depositions heretofore taken in this action as plaintiff shall designate in writing not less than 60 days prior to the date fixed for trial and as any defendant shall designate in writing not less than 15 days prior to the date fixed for trial. No party shall object to the admissibility in evidence of any deposition heretofore taken or any part thereof except on grounds of relevancy or materiality;

(5) This Stipulation and Exhibit I hereto;

(6) Exhibit II hereto and such of the documents listed in Exhibit II hereto as any defendant shall designate in writing not less than 30 days prior to the date fixed for trial;

(7) Such of the statistics and other data set forth in Exhibit III hereto, or graphical presentations prepared therefrom or from Tables 1, 2, or 3, as any defendant shall designate in writing not less than 30 days prior to the date fixed for trial; and

(8) Opinion evidence of expert economists on behalf of the defendants based on the foregoing, and if such opinion evidence is offered on behalf of the defendants rebuttal opinion evidence of expert economists on behalf of the plaintiff based on the foregoing or any other rebuttal evidence to such expert testimony as the Court may permit upon plaintiff's application for good cause shown;

(i) The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information or to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer an agreement to exchange information as to the most recent quoted price for corrugated containers and that from such agreement, together with such facts, the Court may infer an agreement to restrict competition. The defendants deny that there was any agree-

ment to exchange price information or to restrict competition and contend that no such agreement or agreements can be inferred.

Dated: *May 14*, 1965.

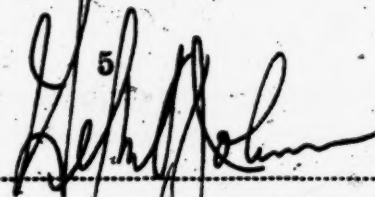
[Signature]
William M. Fure
Robert J. Fure

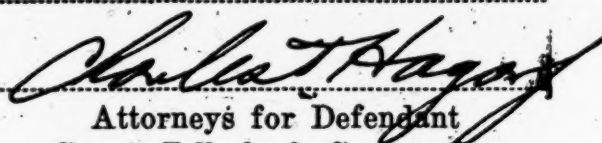
Attorneys for the Plaintiff
 United States of America

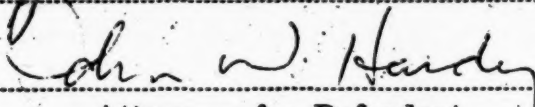
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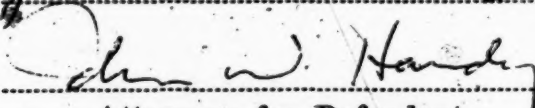
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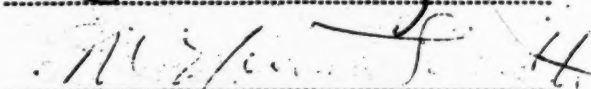
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Donald J. [unclear]

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James R. Withcraft
Robert W. Brooks

Attorneys for Defendant
 Union Bag-Camp Paper Corporation

James D. [unclear]
[unclear]

Attorneys for Defendant
 West Virginia Pulp and Paper
 Company

Daniel C. Smith
Fred B. [unclear]

Attorneys for Defendant
 Weyerhaeuser Company

EXHIBIT I**Further Statement of Proof**

1. In the period 1955 to 1963 the number of plants manufacturing corrugated containers in the Southeastern United States and shipments of corrugated containers from such plants increased as follows:

Year	Number of Plants			Shipments of Corrugated Containers (Millions of Sq. Ft.)
	Total	Defendants	Others	
1955.....	49	18	31	9,077
1956.....	56	21	35	9,659
1957.....	59	30	29	10,026
1958.....	67	36	31	10,400
1959.....	71	43	28	12,328
1960.....	76	46	30	12,266
1961.....	81	53	28	13,481
1962.....	85	55	30	14,831
1963.....	98	58	40	15,846

In 1955 there were 30 and in October, 1963 there were 51 manufacturers of corrugated containers in the Southeastern United States.

2. There is an ample supply of raw materials available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment are available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise.

3. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of such purchasers for such containers.

4. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements.

5. Every purchaser of corrugated containers has numerous alternate sources of supply, both actual and potential. Such purchasers are free to shift all or a part of their business from one supplier to another, and they frequently do so. Although such purchasers generally do not make such shifts unless offered a lower price by another supplier, each defendant repeatedly loses customers and obtains new ones and continuously has substantial losses and gains in its sales to particular customers. Tables 1 and 2 attached hereto as a part hereof reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in Tables 1 and 2 are representative for each defendant of the entire period covered by the Complaint and the documents listed in Exhibit II constitute a sampling from defendants' files.

6. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible.

7. During the period 1955 to 1963 in the Southeastern United States the trend of corrugated container prices was

downward and while containerboard prices fluctuated during the period, they were substantially the same at the end of said period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally and for all other commodities excluding farm and food. During the same period labor rates, machinery and equipment costs, and other production costs for both corrugated containers and containerboard, increased.

8. Each defendant having its own "manual" or "internal manual", as those terms are defined in Paragraphs 36 and 35, respectively, of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964, prepared the same and any revisions thereof independently and without any agreement or understanding with any other defendant.

9. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differ from the price or cost estimates for such container computed under internal manuals of other companies.

10. The great majority of sales of each defendant is made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 attached hereto as a part hereof contains data illustrative of the foregoing for the several defendants for the period covered by the Complaint.

11. The defendants, in selling corrugated containers, deal with buyers who have knowledge of prices which have been and are being offered by competing suppliers of corrugated containers. On occasions buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers.

12. Prices which purchasers of corrugated containers will pay are determined on the basis of price alternatives available to them from existing and prospective suppliers. It is necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers.

13. Each defendant also sought to obtain business by advertising its containers and by offering various types and amounts of customer services such as delivery, warehousing, product development and design; the extent to which such services were offered varied among the defendants.

14. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following:

- (i) estimates prepared from its internal manual;
- (ii) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season and with the rise and fall of business activity of its customers;
- (iii) suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary;
- (iv) availability of any special materials needed to produce the order;
- (v) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of

the plant and which is a major determinant of the efficient and profitable operation of the plant;

(vi) convenience of customer's plant location for servicing and cost of delivery;

(vii) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule;

(viii) customer's credit rating;

(ix) growth prospects of the account and the possibility of substantial future orders;

(x) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it;

(xi) amount of customer's business represented by the order;

(xii) general market conditions in the Southeastern United States and in the corrugated container industry particularly;

(xiii) prices of its recent sales of the same or other corrugated containers to that customer;

(xiv) customer loyalty;

(xv) effect of the order on its costs and profits; and

(xvi) prices believed to have been most recently charged or quoted by competitors, when such defendant believed it had sufficient basis for such belief.

15. In 1963 there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who in the course of their sales activity in behalf of their respective companies each business day made on the average 4 or 5 calls each on pur-

chasers or potential purchasers. In October, 1963 the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States:

Company	Number	Company	Number
Container Corporation.....	57	Mead	26
Albemarle	9	Miller	7
Carolina	15	Owens-Illinois	59
Continental	20	St. Joe.....	12
Crown Zellerbach.....	27	St. Regis.....	23
Dixie	12	Tri-State	5
Dixie of North Carolina..	3	Union-Camp	36
Inland	24	West Virginia.....	17
International	23	Weyerhaeuser	36

16. The representative of St. Joe who attended a meeting of the Fibre Box Association, referred to in Paragraphs 61 and 62 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964, was William L. Tharpe. The meeting referred to took place on March 8, 1962 at Ponte Vedra, Florida. Neither before, during nor after the meeting did Mr. Tharpe request or receive price information from any other defendant, furnish such information to any other defendant, nor discuss prices in any way with any other defendant. No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices.

17. If the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that:

(a) In his opinion the corrugated container industry was and is highly competitive;

(b) His company engaged in and was faced with price competition in the sale of corrugated containers;

(c) He considered that he could (with the exceptions noted in Paragraphs 15 and 24 through 30 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964) request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision.

18. On April 23, 1940 a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318).

19. A true copy of the consent decree is annexed hereto, made a part hereof and marked Appendix A.

20. Container Corporation and Inland were among the defendants in the aforementioned action. In addition, the following corporations were among those made defendants in such action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

21. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court:

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

22. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated:

"1. That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be nolle prossed in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and in promoting free competition in an orderly market;

3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

4. That such consent decree has been tendered by defendants voluntarily and in good faith;

5. That in the opinion of the Department of Justice, the nolle prosequing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; " * * * "

23. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto,

in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.

24. Attached hereto as a part hereof are Appendices B and C which are copies respectively of "Government's Press Release (Issued April 20, 1940) Department of Justice" and "Public Statement Released December 16, 1940, Department of Justice, Division for Enforcement of Anti-trust Laws".

TABLE 1.

Business lost and gained where the old account bought nothing in the current year and the new account had bought nothing in the preceding year.

	Number of Accounts	Dollar Value of Sales Represented Thereby
CONTAINER CORPORATION		
Covering plants located at Fernandina, Fla., Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., Knoxville, Tenn., Lexington, Ky., Louisville, Ky. and Winston-Salem, N. C.		
1960:		
Total accounts.....	3,132	\$29,393,342*
Accounts lost.....	1,313	2,567,434
New accounts.....	1,209	2,209,338
1961:		
Total accounts.....	3,331	29,775,729
Accounts lost.....	1,210	2,856,513
New accounts.....	1,409	4,058,904
1962:		
Total accounts.....	3,231	30,109,788
Accounts lost.....	1,219	1,932,441
New accounts.....	1,119	2,181,051

ALBEMARLE

Covering plant located at Richmond, Va.

1960:		
Total accounts.....	291	\$ 1,765,495**
Accounts lost.....	97	126,780
New accounts.....	92	178,761
1961:		
Total accounts.....	295	1,908,545
Accounts lost.....	96	116,440
New accounts.....	100	347,332
1962:		
Total accounts.....	283	2,131,271
Accounts lost.....	96	174,794
New accounts.....	84	141,461

* The figures for Container Corporation in this column have been rounded off to the nearest dollar. The figures for 1960 include certain charges for art, dies and pallets that were excluded in 1961 and 1962. The percentage of such charges is well below 1%. The figures for 1962 exclude certain freight charges that were included in 1960 and 1961. The percentage of such charges is below 3%.

** The figures for Albemarle in this column have been rounded off to the nearest dollar.

CAROLINA

Covering plant located at High Point, N. C.

1960:

	Number of Accounts	Dollar Value of Sales Represented Thereby
Total accounts.....	785*	\$ 5,760,281**
Accounts lost.....	126	131,695
New accounts.....	207	270,311

1961:

Total accounts.....	850	5,799,171
Accounts lost.....	171	284,386
New accounts.....	236	358,448

1962:

Total accounts.....	805	6,584,927
Accounts lost.....	219	318,076
New accounts.....	177	206,925

CONTINENTAL***

Covering plants located at Richmond, Va., Martinsville, Va. and Atlanta, Ga.

1960:

Total accounts.....	1,229	\$10,960,527****
Accounts lost.....	460	1,101,696
New accounts.....	420	1,556,977

1961:

Total accounts.....	1,151	11,492,895
Accounts lost.....	372	506,980
New accounts.....	294	1,047,317

1962:

Total accounts.....	1,098	13,459,888
Accounts lost.....	377	627,326
New accounts.....	324	962,334

* Due to incomplete records, the number of accounts for Carolina in this column will not reconcile completely as between the years.

** The figures for Carolina in this column have been rounded off to the nearest dollar.

*** Small accounts of \$2,000 or less have been disregarded in the tabulations for Continental.

**** The figures for Continental in this column have been rounded off to the nearest dollar.

Number of
Accounts

Dollar Value of
Sales Represented
Thereby

CROWN ZELLERBACH

Covering plants located at Atlanta, Ga. and Greenville, S. C.

1960:

Total accounts.....	1,281	\$ 9,856,226*
Accounts lost.....	440	2,000,668
New accounts.....	414	1,001,211

1961:

Total accounts.....	1,172	10,369,069
Accounts lost.....	369	572,576
New accounts.....	260	435,988

1962:

Total accounts.....	1,341	12,455,515
Accounts lost.....	380	959,612
New accounts.....	549	3,043,265

DIXIE**

Covering plant located at Richmond, Va.

1960:

Total accounts.....	265	\$ 4,355,000***
Accounts lost.....	26	50,000
New accounts.....	46	160,000

1961:

Total accounts.....	285	4,861,000
Accounts lost.....	25	61,000
New accounts.....	80	506,000

1962:

Total accounts.....	340	6,000,000
Accounts lost.....	32	300,000
New accounts.....	111	1,439,000

* The figures for Crown Zellerbach in this column have been rounded off to the nearest dollar.

** Small accounts of \$2,500 or less have been disregarded in the tabulations for Dixie. Because of incomplete records, Dixie's "Accounts lost" tabulations and, to the extent they reflect "Accounts lost," "Total accounts" tabulations are based on estimates. These estimates tend to understate "Accounts lost", and consequently the figures in the column headed "Number of Accounts" will not reconcile completely as between the years. However, Dixie believes that the tabulations are substantially accurate.

*** The figures for Dixie in this column have been rounded off to the nearest thousand dollars.

DIXIE OF NORTH CAROLINA

Covering plant located at Morganton, N. C.

1960:

	Number of Accounts	Dollar Value of Sales Represented Thereby
Total accounts.....	70*	
Accounts lost.....	10	\$ 10,855**
New accounts.....	33	77,741

1961:

Total accounts.....	112	
Accounts lost.....	19	22,903
New accounts.....	55	133,873

1962:

Total accounts.....	157	
Accounts lost.....	36	62,158
New accounts.....	70	120,604

INLAND

Covering customers located in Southeastern United States.

1960:

Total accounts.....	1,094	\$15,193,254***
Accounts lost.....	325	1,054,260
New accounts.....	400	1,467,670

1961:

Total accounts.....	1,236	15,459,690
Accounts lost.....	303	838,726
New accounts.....	445	1,542,276

1962:

Total accounts.....	1,244	18,669,132
Accounts lost.....	418	1,427,804
New accounts.....	426	1,139,764

* Due to differing methods of compilation, the number of accounts for Dixie of North Carolina in this column will not reconcile completely as between the years.

** Dollar sales figures for Dixie of North Carolina's "Total accounts" are unavailable. The figures which do appear in this column for Dixie of North Carolina have been rounded off to the nearest dollar.

*** The figures for Inland in this column have been rounded off to the nearest dollar.

	Number of Accounts	Dollar Value of Sales Represented Thereby
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INTERNATIONAL

Covering plants located at Georgetown, S. C. and Auburndale, Fla.

1960:

Total accounts.....	408	\$ 3,579,995*
Accounts lost.....	64	121,754
New accounts.....	162	329,582

1961:

Total accounts.....	447	4,440,646
Accounts lost.....	96	164,416
New accounts.....	135	492,988

1962:

Total accounts.....	449	5,670,344
Accounts lost.....	114	236,887
New accounts.....	116	374,860

MEAD**

Covering plants located at Durham, N. C., Atlanta, Ga. and Miami, Fla.

1960:

Total accounts.....	1,759	\$13,528,819***
Accounts lost.....	212	1,067,242
New accounts.....	224	1,103,756

1961:

Total accounts.....	1,878	13,583,308
Accounts lost.....	135	507,153
New accounts.....	304	1,569,478

1962:

Total accounts.....	2,066	15,175,141
Accounts lost.....	245	585,347
New accounts.....	485	1,836,957

* The figures for International in this column have been rounded off to the nearest dollar.

** Small accounts of \$2,000 or less were ignored in compiling the "Accounts lost" and "New accounts" figures for Mead's Durham, N. C. and Atlanta, Ga. plants. Some Mead customers were counted as single accounts in the "Accounts lost" and "New accounts" columns but were counted as multiple accounts in the "Total accounts" column because they had a number of plants ordering as separate entities. As a result, the figures for Mead in the column headed "Number of Accounts" do not reconcile completely as between the years.

*** With the exception of the "Total accounts" figures for its Atlanta, Ga. plant which were rounded off to the nearest thousand dollars, Mead's figures for this column were rounded off to the nearest dollar.

Number of
AccountsDollar Value of
Sales Represented
Thereby**MILLER**

Covering plant located at Roanoke, Va.

1960:		
Total accounts.....	349	\$ 2,546,000*
Accounts lost.....	97	165,000
New accounts.....	55	58,000
1961:		
Total accounts.....	343	2,697,000
Accounts lost.....	83	202,000
New accounts.....	77	217,000
1962:		
Total accounts.....	380	3,185,000
Accounts lost.....	49	110,000
New accounts.....	86	206,000

OWENS-ILLINOIS

Covering plants located at Atlanta, Ga., Jacksonville, Fla., Miami, Fla. and Salisbury, N. C.

1960:		
Total accounts.....	2,527	\$14,236,000**
Accounts lost.....	896	1,640,000
New accounts.....	908	2,252,000
1961:		
Total accounts.....	2,353	16,475,000
Accounts lost.....	941	1,879,000
New accounts.....	767	2,579,000
1962:		
Total accounts.....	2,275	17,702,000
Accounts lost.....	746	1,356,000
New accounts.....	668	2,084,000

* The figures for Miller in this column have been rounded off to the nearest thousand dollars.

** The figures for Owens-Illinois in this column have been rounded off to the nearest thousand dollars.

ST. JOE

Covering plants located at Port St. Joe, Fla. and Birmingham, Ala.

1960:

	Number of Accounts	Dollar Value of Sales Represented Thereby
Total accounts.....	647	\$ 3,705,765*
Accounts lost.....	148	275,893
New accounts.....	378	839,145

1961:

Total accounts.....	685	5,007,166
Accounts lost.....	210	264,122
New accounts.....	248	334,304

1962:

Total accounts.....	704	5,697,530
Accounts lost.....	208	220,726
New accounts.....	227	1,069,907

ST. REGIS

Covering plants located at Atlanta, Ga., Birmingham, Ala. and Jacksonville, Fla.

1960:

Total accounts.....	1,397	\$ 7,216,890**
Accounts lost.....	311	386,669
New accounts.....	467	828,809

1961:

Total accounts.....	1,287	7,715,017
Accounts lost.....	460	626,111
New accounts.....	350	678,566

1962:

Total accounts.....	1,333	7,289,296
Accounts lost.....	426	846,642
New accounts.....	472	968,882

* Amounts of less than one dollar have been dropped in the figures for St. Joe in this column.

** The figures for St. Regis in this column have been rounded off to the nearest dollar. Averages were used to convert gross sales figures to net sales figures. In the case of the Birmingham, Ala. plant, the records for 1960 for certain customers combined corrugated box with folding box sales; however, such records relate to less than 0.5% of total sales for 1960, and estimates were made with respect to the sales reflected by such records on the basis of the proportion of corrugated to folding box sales to such customers in later years.

TRI-STATE

Covering plant located at Elizabethton, Tenn.

1960:

	Number of Accounts	Dollar Value of Sales Represented Thereby
Total accounts.....	352	\$ 6,227,741*
Accounts lost.....	63	109,719
New accounts.....	68	260,629

1961:

Total accounts.....	386	6,234,344
Accounts lost.....	72	278,387
New accounts.....	107	282,020

1962:

Total accounts.....	396	6,935,664
Accounts lost.....	85	151,646
New accounts.....	95	287,262

UNION-CAMP

Covering plants located at Spartanburg, S. C. and Jamestown, N. C.**

1962:

Total accounts.....	864	\$ 9,038,421***
Accounts lost.....	175	369,601
New accounts.....	207	555,186

* Amounts of less than one dollar have been dropped in the figures for Tri-State in this column.

** No comparisons available before 1962.

*** The figures for Union-Camp in this column have been rounded off to the nearest dollar.

WEST VIRGINIA*Number of
AccountsDollar Value of
Sales Represented
Thereby

Covering plants located at Richmond, Va. and Gastonia, N. C.

1960:

Total accounts.....	1,304	\$10,417,948
Accounts lost.....	354	450,603
New accounts.....	403	1,342,998

1961:

Total accounts.....	1,211	10,699,339
Accounts lost.....	398	545,249
New accounts.....	305	430,488

1962:

Total accounts.....	1,161	12,117,882
Accounts lost.....	327	604,805
New accounts.....	277	468,591

WEYERHAEUSER

Covering plants located at Charlotte, N. C. and Tampa, Fla.

1960:

Total accounts.....	1,118**	\$ 6,315,371***
Accounts lost.....	411	345,403
New accounts.....	360	1,119,968

1961:

Total accounts.....	1,089	6,525,929
Accounts lost.....	357	426,088
New accounts.....	315	672,331

1962:

Total accounts.....	1,077	7,061,580
Accounts lost.....	344	493,741
New accounts.....	329	652,929

Covering plant located at Lynchburg, Va.****

1962:

Total accounts.....	201	\$ 718,069
Accounts lost.....	86	22,378
New accounts.....	96	130,065

* The figures for West Virginia in this column have been rounded off to the nearest dollar.

** Weyerhaeuser has treated as separate "accounts" different plants of the same customer where there is separate and independent control of purchasing at the plant level. Due in varying degrees to merger of customers and the centralization or decentralization of the control of purchasing as between respective plants of customers, the number of accounts for Weyerhaeuser in this column will not reconcile completely as between the years.

*** The figures for Weyerhaeuser in this column have been rounded off to the nearest dollar.

**** No comparisons available before 1962.

TABLE 2

Business lost and gained where the old account was not entirely lost and new business gained was in an account previously serviced.

CONTAINER CORPORATION*

Covering plants located at Fernandina, Fla., Memphis, Tenn., Nashville, Tenn., Chattanooga, Tenn., Knoxville, Tenn., Lexington, Ky., Louisville, Ky. and Winston-Salem, N. C.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	3,132	\$29,393,342		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	345	553,669	\$ 2,718,234	\$(2,164,565)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	488	6,287,025	2,106,850	4,180,175
1961:				
Total accounts.....	3,331	29,775,729		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	343	654,745	2,960,854	(2,306,109)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	477	4,304,660	1,621,560	2,683,100
1962:				
Total accounts.....	3,231	30,109,788		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	376	846,055	3,575,969	(2,729,914)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	558	5,160,920	1,873,062	3,287,858

* Dollar figures have been rounded off to the nearest dollar. Such figures for 1960 include certain charges for art, dies and pallets that were excluded in 1961 and 1962; the percentage of such charges is well below 1%. Because dollar figures for 1962 exclude certain freight charges that were included in 1960 and 1961, an adjustment was used, where required, to compare 1962 sales with the preceding year's sales.

ALBEMARLE*

Covering plant located at Richmond, Va.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	291	\$ 1,765,495		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	40	65,146	\$ 240,808	\$ (175,662)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	49	474,942	97,188	377,754
1961:				
Total accounts.....	295	1,908,545		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	50	132,348	426,965	(294,617)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	50	399,292	196,332	202,960
1962:				
Total accounts.....	283	2,131,271		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	33	47,253	180,409	(133,156)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	65	651,511	270,436	381,075

* Dollar figures have been rounded off to the nearest dollar.

CAROLINA*

Covering plant located at High Point, N. C.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	785	\$ 5,760,281		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	59	136,270	\$ 382,434	\$ (246,163)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	122	885,265	240,018	645,247
1961:				
Total accounts.....	850	5,799,171		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	97	149,762	548,227	(398,465)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	76	422,794	121,436	291,358
1962:				
Total accounts.....	805	6,584,927		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	79	136,317	* 420,501	(284,184)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	116	684,841	222,719	462,122

* Dollar figures have been rounded off to the nearest dollar.

CONTINENTAL*

Covering plants located at Richmond, Va., Martinsville, Va. and Atlanta, Ga.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,229	\$10,960,527		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	135	354,431	\$ 1,832,090	\$(1,477,659)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	75	2,431,573	798,926	1,632,647
1961:				
Total accounts.....	1,151	11,492,895		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	145	374,891	1,781,261	(1,406,370)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	48	1,629,638	846,112	783,526
1962:				
Total accounts.....	1,098	13,459,888		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	122	224,279	1,127,322	(903,043)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	61	2,678,594	1,523,958	1,154,636

* Small accounts of \$2,000 or less have been disregarded. Dollar figures have been rounded off to the nearest dollar.

CROWN ZELLERBACH*

Covering plants located at Atlanta, Ga. and Greenville, S. C.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,281	\$ 9,856,226		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	74	445,617	\$ 1,495,326	\$(1,049,709)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	56	1,082,675	415,936	666,739
1961:				
Total accounts.....	1,172	10,369,069		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	68	266,666	885,671	(619,005)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	64	1,738,449	645,148	1,093,301
1962:				
Total accounts.....	1,341	12,455,515		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	49	206,794	892,640	(685,846)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	79	2,675,267	1,248,948	1,426,319

* Small accounts of \$3,500 or less have been disregarded except as far as the "Total accounts" figures are concerned. Dollar figures have been rounded off to the nearest dollar.

INLAND*

Covering customers located in Southeastern United States.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,094	\$15,193,254		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	126	606,149	\$ 2,295,513	\$(1,689,364)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	132	2,246,150	995,212	1,250,938
1961:				
Total accounts.....	1,236	15,359,690		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	148	602,536	2,169,733	(1,567,197)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	160	2,431,176	650,820	1,780,356
1962:				
Total accounts.....	1,244	18,669,132		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	127	431,440	1,570,594	(1,139,154)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	191	4,233,955	1,142,572	3,091,383

* Dollar figures have been rounded off to the nearest dollar.

INTERNATIONAL*

Covering plants located at Georgetown, S. C. and Auburndale, Fla.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	408	\$ 3,579,995		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	32	150,602	\$ 512,749	\$ (362,147)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	78	873,467	368,343	505,124
1961:				
Total accounts.....	447	4,440,646		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	59	122,184	368,098	(245,914)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	84	1,179,761	511,351	668,410
1962:				
Total accounts.....	449	5,670,344		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	56	176,291	460,667	(284,377)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	128	2,457,014	896,204	1,560,811

* Dollar figures have been rounded off to the nearest dollar.

MEAD*

Covering plants located at Durham, N. C., Atlanta, Ga. and Miami, Fla.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,759	\$13,528,819		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	132	691,569	\$ 2,897,888	\$ (2,206,319)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	147	2,823,053	1,062,581	1,760,472
1961:				
Total accounts.....	1,878	13,583,308		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	103	388,659	1,409,488	(1,020,829)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	151	2,695,732	973,850	1,721,882
1962:				
Total accounts.....	2,066	15,175,141		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	105	378,446	1,348,626	(970,180)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	138	3,369,881	1,165,151	2,204,730

* Small accounts of \$2,000 or less have been disregarded except as far as the "Total accounts" figures are concerned. The figures for the Durham, N. C. and Atlanta, Ga. plants were rounded off to the nearest dollar; the figures for the Miami, Fla. plant were rounded off to the nearest hundred dollars.

OWENS-ILLINOIS*

Covering plants located at Atlanta, Ga., Jacksonville, Fla., Miami, Fla. and Salisbury, N. C.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	2,527	\$14,236,000		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	357	668,000	\$ 2,596,000	\$(1,928,000)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	381	2,738,000	1,067,000	1,671,000
1961:				
Total accounts.....	2,353	16,475,000		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	268	537,000	2,005,000	(1,468,000)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	470	5,428,000	2,148,000	3,280,000
1962:				
Total accounts.....	2,275	17,702,000		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	288	956,000	3,754,000	(2,798,000)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	412	4,664,000	1,753,000	2,911,000

* Dollar figures have been rounded off to the nearest thousand dollars.

ST. JOE

Covering plants located at Port St. Joe, Fla. and Birmingham, Ala.

	Number	Current Year's Dollar Value of Sales Represented Thereby*	Preceding Year's Dollar Value of Sales Represented Thereby*	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	647	\$ 3,705,765		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	41	75,166	\$ 225,730	\$ (150,563)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	76	1,061,150	455,711	605,439
1961:				
Total accounts.....	685	5,007,166		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	78	82,646	292,989	(210,343)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	128	1,007,309	329,919	677,390
1962:				
Total accounts.....	704	5,697,530		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	88	144,557	491,075	(346,518)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	173	1,891,142	666,731	1,224,411

* Amounts of less than one dollar have been dropped in the final figures.

ST. REGIS*

Covering plants located at Atlanta, Ga., Birmingham, Ala. and Jacksonville, Fla.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,397	\$ 7,216,890		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	149	247,020	\$ 717,048	\$ (470,028)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	255	1,823,696	772,838	1,050,858
1961:				
Total accounts.....	1,287	7,715,017		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	177	272,391	1,193,552	(921,161)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	246	2,705,998	859,418	1,846,580
1962:				
Total accounts.....	1,333	7,289,296		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	131	317,092	1,610,848	(1,293,756)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	265	2,009,504	847,023	1,162,481

* Dollar figures have been rounded off to the nearest dollar. Averages were used to convert gross sales figures to net sales figures. In the case of the Birmingham, Ala. plant, the records for 1960 for certain customers combined corrugated box with folding box sales; however, such records relate to less than 0.5% of total sales for 1960, and estimates were made with respect to the sales reflected by such records on the basis of the proportion of corrugated to folding box sales to such customers in later years.

TRI-STATE

Covering plant located at Elizabethton, Tenn.

	Number	Current Year's Dollar Value of Sales Represented Thereby*	Preceding Year's Dollar Value of Sales Represented Thereby*	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	352	\$ 6,227,741		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	10	154,986	\$ 438,401	\$ (283,415)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	40	1,008,149	498,498	509,651
1961:				
Total accounts.....	386	6,234,344		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	20	164,017	539,182	(375,165)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	38	504,420	209,795	294,625
1962:				
Total accounts.....	396	6,935,664		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	20	116,649	433,445	(316,796)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	51	1,793,736	887,524	906,212

* Amounts of less than one dollar have been dropped in the final figures.

WEST VIRGINIA*

Covering plants located at Richmond, Va. and Gastonia, N. C.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,304	\$10,417,948		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	139	197,717	\$ 858,754	\$ (661,037)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	214	1,871,981	739,630	1,132,351
1961:				
Total accounts.....	1,211	10,699,339		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	158	347,276	1,155,025	(807,749)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	226	2,631,090	1,030,713	1,600,377
1962:				
Total accounts.....	1,161	12,117,882		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	115	212,715	613,214	(400,499)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	253	2,915,480	1,320,329	1,595,151

* Dollar figures have been rounded off to the nearest dollar.

WEYERHAEUSER*

Covering plants located at Charlotte, N. C. and Tampa, Fla.

	Number	Current Year's Dollar Value of Sales Represented Thereby	Preceding Year's Dollar Value of Sales Represented Thereby	Increase (or Decrease) of Current Year's Sales Over (or from) Preceding Year's Sales
1960:				
Total accounts.....	1,118	\$ 6,315,371		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	51	234,683	\$ 915,765	\$ (681,082)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	48	1,928,485	623,407	1,305,078
1961:				
Total accounts.....	1,089	6,525,929		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	48	523,112	1,515,538	(992,426)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	58	1,525,621	310,264	1,215,357
1962:				
Total accounts.....	1,077	7,061,580		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	84	293,480	1,452,777	(1,159,297)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	90	2,135,243	542,089	1,593,154
Covering plant located at Lynchburg, Va.**				
1962:				
Total accounts.....	201	718,069		
Accounts where current year's sales (in dollars) are less than 50% of preceding year's sales.....	2	20,845	60,552	(39,707)
Accounts where current year's sales (in dollars) are more than 150% of preceding year's sales.....	13	171,634	26,470	145,164

* Small accounts of \$5,000 or less have been disregarded except as far as the "Total accounts" figures are concerned. Dollar figures have been rounded off to the nearest dollar.

** No comparisons available before 1962.

TABLE 3

Data illustrative of the facts that the great majority of sales of each defendant is made at prices less than the prices would have been if computed on any published manual and that there is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. (Each defendant's computations in connection with its preparation of that portion of Table 3 relating to it were made solely for the purpose of preparing Table 3).

CONTAINER CORPORATION

Percentages by which actual selling prices during the month of January, 1962, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

	Chattanooga Plant	Knoxville Plant	Winston- Salem Plant
Percentage of sales made at prices greater than manual	9.0%	9.6%	2.1%
" " " equal to manual	1.0	14.0	4.7
" " " 0 - 5.0% below manual	6.2	6.2	20.1
" " " 5.1 - 10 " "	17.7	20.6	20.2
" " " 10.1 - 15 " "	10.7	22.0	23.2
" " " 15.1 - 20 " "	7.4	12.0	6.7
" " " 20.1 - 25 " "	9.4	7.6	7.0
" " " 25.1 - 30 " "	10.3	4.4	2.2
" " " 30.1 - 35 " "	12.6	1.8	13.5
" " " 35.1 - 40 " "	6.7	1.8	.3
" " " 40.1 - 45 " "	5.4	—	—
" " " 45.1 - 50 " "	1.9	—	—
" " " 50.1 - 55 " "	1.7	—	—
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

CROWN ZELLERBACH

Percentages by which actual selling prices during the month of January, 1962, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

					Atlanta Plant	Greenville Plant
Percentage of sales						
made at prices	greater than manual				8.52%	5.07%
" " "	equal to manual				.62	2.33
" " "	0 - 5.0% below manual				7.04	5.62
" " "	5.1 - 10	"	"		14.06	10.39
" " "	10.1 - 15	"	"		19.47	16.99
" " "	15.1 - 20	"	"		8.67	24.48
" " "	20.1 - 25	"	"		15.27	7.03
" " "	25.1 - 30	"	"		14.20	15.09
" " "	30.1 - 35	"	"		7.81	7.09
" " "	35.1 - 40	"	"		3.88	4.69
" " "	40.1 - 45	"	"		.34	.81
" " "	45.1 - 50	"	"		.11	.24
" " "	50.1 - 55	"	"		.01	.13
" " "	55.1 - 60	"	"	"	—	.05
					<u>100.0%</u>	<u>100.01%*</u>

* Exceeds 100.0% due to rounding.

DIXIE

Percentages by which actual selling prices during the month of January, 1963, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

Percentage of sales				
made at prices equal to and greater than manual				23.7%
"	"	"	0 - 4.4% below manual	4.3
"	"	"	4.5 - 9.0 " "	5.7
"	"	"	9.1 - 16.0 " "	21.6
"	"	"	16.1 - 18.4 " "	10.1
"	"	"	18.5 - 23.0 " "	11.8
"	"	"	23.1 - 29.9 " "	4.2
"	"	"	30.0 or more " "	18.6
				<hr/> 100.0%

INLAND

Percentages by which actual selling prices during the month of February, 1962, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

Percentage of sales		Macon Plant	
made at prices greater than manual			.3%
" " "	equal to manual	—	
" " "	0 - 5.0% below manual	—	
" " "	5.1 - 10	—	
" " "	10.1 - 20	" "	39.7
" " "	20.1 - 30	" "	40.3
" " "	30.1 or more	" "	19.7
			<hr/> 100.0%

MEAD

Percentages by which actual selling prices during the month of June, 1963, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual referred to in Paragraph 45, D, of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

						Durham Plant
Percentage of sales						
made at prices greater than manual						6.4%
"	"	"	equal to manual			9.4
"	"	"	0	-	5.0% below manual	6.7
"	"	"	5.1	-	10	6.1
"	"	"	10.1	-	15	1.9
"	"	"	15.1	-	20	45.6
"	"	"	20.1	-	25	16.8
"	"	"	25.1	-	30	6.9
"	"	"	30.1	-	35	0.2
						<hr/> 100.0%

OWENS-ILLINOIS

Percentages by which actual selling prices during the month of June, 1963, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective March 1, 1962, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

Percentage of sales						Salisbury Plant
made at prices greater than manual						.05%
"	"	"	equal to manual			7.97
"	"	"	0	-	5.0% below manual	10.26
"	"	"	5.1	-	10	10.58
"	"	"	10.1	-	15	12.85
"	"	"	15.1	-	20	14.05
"	"	"	20.1	-	25	9.36
"	"	"	25.1	-	30	19.02
"	"	"	30.1	-	35	12.28
"	"	"	35.1	-	40	3.56
"	"	"	40.1	-	45	.02
"	"	"	45.1	-	50	.01
						<hr/> 100.01%*

*Exceeds 100.0% due to rounding.

ST. JOE

Percentages by which actual selling prices during the months of August, 1960 (Port St. Joe Plant), and October, 1961 (Birmingham Plant), were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective July 1, 1959 (Port St. Joe Plant), or the manual effective August 15, 1961 (Birmingham Plant) referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

				Port St. Joe Plant	Birmingham Plant
Percentage of sales made at prices greater than manual				27.07%	3.22%
"	"	"	equal to manual	7.82	3.76
"	"	"	0 - 5.4 below manual	24.97	6.78
"	"	"	5.5 - 10.4	23.00	16.10
"	"	"	10.5 - 15.4	6.61	17.51
"	"	"	15.5 - 20.4	3.41	8.12
"	"	"	20.5 - 25.4	5.53	11.96
"	"	"	25.5 - 30.4	.79	12.15
"	"	"	30.5 - 35.4	.28	5.99
"	"	"	35.5 - 40.4	.47	7.50
"	"	"	40.5 - 45.4	—	4.79
"	"	"	45.5 - 50.4	.01	1.88
"	"	"	50.5 - 55.4	.01	.07
"	"	"	55.5 - 60.4	—	.10
"	"	"	60.5 - 65.4	—	—
"	"	"	65.5 - 70.4	—	.02
				99.97%*	99.95%*

* Figures do not total 100% due to rounding.

WEST VIRGINIA

Percentages by which actual selling prices during the month of January, 1963, were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective March 1, 1962, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964.

Percentage of sales						Gastonia Plant
made at prices greater than manual						.59%
"	"	"	equal to manual			9.63
"	"	"	0	-	5.0% below manual	11.25
"	"	"	5.1	-	10	10.67
"	"	"	10.1	-	15	7.35
"	"	"	15.1	-	20	4.40
"	"	"	20.1	-	25	11.36
"	"	"	25.1	-	30	10.00
"	"	"	30.1	-	35	12.79
"	"	"	35.1	-	40	9.27
"	"	"	40.1	-	45	10.13
"	"	"	45.1	-	or more	2.57
						<hr/> 100.01%*

* Exceeds 100.00% due to rounding.

**Percentages of sales made during July, 1963,
at various board levels.**

(The board levels have been computed from actual selling prices and are expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.)

						Martinsville Plant
Percentage of sales made at board levels below \$ 9.00						3.84%
"	"	"	"	"	from \$ 9.00 to \$10.35	13.18
"	"	"	"	"	" \$10.36 to \$12.34	38.28
"	"	"	"	"	" \$12.35 to \$12.99	14.74
"	"	"	"	"	of \$13.00	19.58
"	"	"	"	"	from \$13.01 to \$13.59	.03
"	"	"	"	"	" \$13.60 to \$13.65	7.40
"	"	"	"	"	" \$13.66 to \$14.29	.87
"	"	"	"	"	of \$14.30	1.68
"	"	"	"	"	over \$14.30	.40
						<u>100.00%</u>

MILLER**Percentages of sales made during October, 1962,
at various board levels.**

(The board levels have been computed from actual selling prices and are expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.)

Percentage of sales						
made at board levels below \$12.00.....					21.0%	"
"	"	"	"	"	from \$12.01 to \$12.99.....	17.9
"	"	"	"	"	of \$13.00.....	14.4
"	"	"	"	"	from \$13.01 to \$14.00.....	25.8
"	"	"	"	"	" \$14.01 to \$15.00.....	20.5
"	"	"	"	"	of over \$15.00.....	.4
						<hr/> 100.0%

UNION-CAMP

PART I

Percentages of sales made during July, 1961, October, 1961, February, 1962, and March, 1963, at various board levels.

(The board levels have been computed from actual selling prices and are expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.)

		Jamestown Plant			
		July 1961	Oct. 1961	Feb. 1962	Mar. 1963
Percentage of sales made at board levels	\$ 9.1000 and below	1.7	1.9	—	5.7
" " " " " from \$ 9.1001 to	10.3900 inc.	46.5	34.5	17.4	28.6
" " " " " \$10.3901 to	12.3400 inc.	27.5	36.9	48.6	35.6
" " " " " \$12.3401 to	12.9900 inc.	14.1	2.1	1.8	5.2
" " " " " \$12.9901 to	13.5900	10.2	7.8	12.3	11.6
" " " " " \$13.5901 to	14.2900 inc.	—	8.1	11.8	2.9
" " " " " \$14.2901 to	14.9900 inc.	—	8.7	8.1	5.2
" " " " " \$14.9901 and above		—	—	—	5.2
		100.0%	100.0%	100.0%	100.0%

Board levels set forth in the various manuals referred to in Paragraphs 45 and 46 of Exhibit I to the Stipulation as to Certain Proof dated August 12, 1964, are as follows:

February 17, 1955—\$12.50

October 15, 1956 — 12.35

August 1, 1957 — 13.00

August 15, 1961 — 14.30

March 1, 1962 — 15.00

UNION-CAMP

PART II

SUMMARY

ALL SALES OF FOUR SPECIFIC BOXES

—1957 through 1962—

Box No.	Actual Sales Price Range (\$)	Manual Price Range (\$)
CT-2R1.....	192.35-228.85	317.25-366.40
12/3.....	86.40-106.55	145.85-173.25
75228.....	533.45-575.75	549.05-621.40
71211.....	118.50-144.80	192.70-226.20

CONSENT DECREE

The United States of America filed its complaint herein April 20, 1940; each of the above-named defendants appeared and filed its answer to such complaint; no testimony having been taken, each of said defendants consents to the entry of this decree, without any findings of fact, on condition that neither such consent nor this decree shall be evidence, admission, or adjudication that it has violated any law of the United States; and the United States, by counsel, having

consented to the entry of this decree and to each and every provision thereof, and having moved for this injunction;

And it appearing that by virtue of the attached consents of said defendants, and the acceptance of the same by the plaintiff, it is unnecessary to proceed with the trial of the action, or to take testimony therein, or to make findings of fact, or to adjudicate the issues presented by the pleadings;

Now, THEREFORE, before any testimony has been taken, and without any findings of fact or adjudication of the issues, and upon the consent of all parties hereto, it is hereby

ORDERED AND DECREED as follows:

1. The Court has jurisdiction of the parties to this decree; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, the Court has jurisdiction of the subject matter hereof, and the complaint states a cause of action against said defendants, and each of them, under Section 1 of the Sherman Act. (15 U. S. C. A. § 1).

2. Said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, be, and they hereby are, enjoined and restrained from agreeing, combining, or conspiring among themselves or with any other manufacturer of corrugated or solid fibre shipping containers

(a) to limit production of corrugated or solid fibre shipping containers to predetermined quotas;

(b) to formulate, promote, or take part in any plan for prorationing of business, or the equitable sharing of available business, the purpose or effect of which is to limit the production of such containers to such quotas;

(c) to determine the volume of business of manufacturers of such containers for any period or periods for the purpose of establishing such quotas;

(d) to collect, compile, or compare data respecting production, sales, orders, shipments, or deliveries of such containers for the purpose of determining whether manufacturers of such containers have adhered to, or are adhering to, such quotas;

(e) to distribute production, shipment, or price data, in such form as to indicate that a manufacturer of such containers is or is not adhering to any such quota;

(f) to present or discuss, at meetings of manufacturers of such containers, or elsewhere, or by correspondence or otherwise, production, shipment, or price data in such form or manner as to indicate that a manufacturer of such containers has exceeded any such quota, or that it should limit present or future production so as to come within any such quota;

(g) to examine or audit the production, shipment, or price records or accounts of manufacturers of such containers for the purpose of securing adherence to any such quota;

(h) to allocate, or to refrain from soliciting, customers of manufacturers of such containers, or to allocate markets or marketing territories among the several manufacturers of such containers;

(i) to fix or maintain prices for such containers;

(j) to use, or to promote the use of, an estimating manual, or any other handbook or device, for the purpose of fixing or maintaining the prices of such containers;

(k) to use, or to promote the use of, predetermined prices for materials, manufacturing operations, or delivery in

- (i) estimating or pricing such containers, or
- (ii) analyzing production, price, sales, order, shipment, or delivery data of manufacturers of such containers for the purpose of fixing or maintaining the prices thereof of two or more manufacturers;
- (l) to examine or audit the production, shipment, or price records or accounts of manufacturers of such containers for the purpose of fixing or maintaining the prices of such containers;
- (m) to compel a manufacturer of such containers
 - (i) to submit copies of invoices to a trade association or like agency, or
 - (ii) to name or identify any customer account in connection with the submission of invoices to such trade association or agency;
- (n) to authorize a trade association or like agency to disclose customer invoices (or data as to individual transactions with customers), which have been submitted by a manufacturer of such containers to such trade association or agency, to a competitor of such manufacturer.

3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them, or any of them, to do, or to cooperate in doing, any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

- (a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on hand, approximate cost of transportation, and any

other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers;

(b) promoting the application of uniform cost accounting to the manufacturing, estimating, and sales policies and practices of manufacturers of such containers;

(c) compiling, publishing, and circulating, in the form of a currently revised loose leaf industry manual, handbook, or otherwise, recommended formulas, methods, systems, or procedures, and illustrations thereof, for the computation of selling prices of such containers without, however, in any such industry manual or handbook, specifying or recommending the selling price to be charged for any such containers, the price to be charged for freight or any manufacturing operation or material used in the manufacture of such containers, or rate of profit to be included by any manufacturer in the selling price of any such containers;

(d) compiling, publishing, and circulating, in any form, current data as to the cost of the materials, operations, and other elements that go into the manufacture, sale, and delivery of such containers, provided, however, that such cost data shall not consist exclusively of average (or weighted average) costs of two or more manufacturers and that the cost of any individual manufacturer shall not be so identified by name or otherwise in any trade association publication as to be made known to its competitors;

(e) exchanging information as to

(i) credit, and

(ii) specific current contracts for the sale of such containers for the sole purpose of avoiding interference with such contracts.

4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors.

5. Nothing contained in this decree shall apply to

(a) any agreement between

(i) a manufacturer of such containers and its subsidiaries,

(ii) a manufacturer and companies associated through common ownership or operating management, or

(iii) the subsidiaries of any such manufacturer;

(b) the conduct of the individual business of any defendant;

(c) manufacture other than the fabrication of shipping containers out of corrugated or solid fibre board;

(d) operations or activities of the defendants outside the United States, its Territories and the District of Columbia, or to their operations or activities within the United States, its Territories and the District of Columbia, which relate exclusively to foreign countries;

(e) agreements or arrangements permitted by Section 1 of the Sherman Act as amended by the Act of August 17, 1937, commonly called the Miller-Tydings Act, or by the patent laws.

6. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney general and on reasonable notice as to time and subject matter, be permitted (i) reasonable access, during the office hours of said defendants, to all books, ledgers, accounts, cor-

respondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters enjoined by this decree, (ii) subject to the reasonable convenience of said defendants, and without restraint or interference from them, and subject to any legally recognized privilege, to interview officers or employees of said defendants, in the presence of counsel, regarding any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

7. Jurisdiction of this action is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of said defendants, or any of them, required in order to conform this decree to any act of Congress enacted after the date of entry of this decree or to the laws or regulations of any State), for the enforcement of compliance therewith and the punishment of violations thereof.

Dated, April 23, 1940.

HENRY W. GODDARD
District Judge

WE HEREBY CONSENT to the entry of the foregoing decree:

UNITED STATES OF AMERICA

By THURMAN ARNOLD

Assistant Attorney General

JOHN T. CAHILL

United States Attorney

FRANK H. ELMORE, JR.

CHRISTOPHER DEL SESTO

MANUEL M. GORMAN

SAMUEL E. NEEL

Special Assistants to the Attorney General

**NATIONAL CONTAINER ASSOCIATION,
AMERICAN BOX BOARD COMPANY,
DOWNING BOX COMPANY,
FEDERAL CONTAINER COMPANY,
FORT WAYNE CORRUGATED PAPER CO.,
GAYLORD CONTAINER CORPORATION,
HUMMEL & DOWNING COMPANY,
INLAND CONTAINER CORPORATION
(INDIANA),**

**IOWA FIBRE BOX COMPANY,
THE JACKSON BOX COMPANY,
F. J. KRESS BOX COMPANY,
LAWRENCE PAPER COMPANY,
LOY-LANGE BOX COMPANY,
NIAGARA CORRUGATED CONTAINER CO.,
INC.,
ST. LOUIS BASKET & BOX CORP.,
SCHARFF-KOKEN MANUFACTURING CO.,
SUPERIOR PAPER PRODUCTS CO., and
WARASH FIBRE BOX COMPANY,**

By WEBSTER & GARSIDE

Their Attorneys

CONTAINER CORPORATION OF AMERICA,

By SIMPSON THACHER & BARTLETT

Its Attorneys

EDDY PAPER CORPORATION,

KIECKHEFER CONTAINER CORPORATION,

and

ROCHESTER FOLDING BOX COMPANY,

By PARKER NEWHALL

LARKIN, RATHBONE & PERRY

Their Attorneys

ROBERT GAIR COMPANY, INC.,

By LARKIN, RATHBONE & PERRY

Its Attorneys

HINDE & DAUGH PAPER COMPANY,

By CHARLES E. FROHMAN

WEBSTER & GARSIDE

Its Attorneys

NATIONAL CONTAINER CORPORATION
(DEL.),

By SAUL & MARSHALL M. BERNSTEIN

Its Attorneys

THE STEVENSON CORPORATION,

By WISE, CORLETT & CANFIELD

Its Attorneys

WALDORF PAPER PRODUCTS Co.,

**By MITCHELL, TAYLOR, CAPRON &
MARSH**

Its Attorneys

EXHIBIT IIIHOURS & EARNINGS

Fibre Box Industry, as published in the
Fiber Box Association Statistical Yearbooks

	Hourly Earnings Total	Payroll Per M Sq. Ft. All Plants
1955	\$ 1.908	\$ 2.27
1956	2.011	2.33
1957	2.107	2.42
1958	2.198	2.39
1959	2.280	2.47
1960	2.324	2.46
1961	2.455	2.53
1962	2.529	2.53
1963	2.605	2.56

Wholesale Price Index of Paper and Allied Products**Bureau of Labor Statistics****U.S. Dept. of Labor****1957-59 = 100**

1955	91.1
1956	97.2
1957	99.0
1958	100.0
1959	101.0
1960	101.8
1961	98.8
1962	100.0
1963	99.2

Wholesale Price Index of Commodities other than Farm Products and Food

Bureau of Labor Statistics

U.S. Dept. of Labor

1957-59 = 100

1955	92.4
1956	96.5
1957	99.2
1958	99.5
1959	101.3
1960	101.3
1961	100.8
1962	100.8
1963	100.7

Wholesale Price Index of General Purpose Machinery and Equipment
Bureau of Labor Statistics

U.S. Dept. of Labor

1957-59 = 100

1955	83.2
1956	91.6
1957	97.9
1958	99.4
1959	102.7
1960	103.8
1961	102.8
1962	103.3
1963	103.8

Wholesale Price Index of all Machinery and Equipment**Bureau of Labor Statistics****U.S. Dept. of Labor****1957-59 = 100**

1955	85.8
1956	92.1
1957	97.7
1958	100.1
1959	102.2
1960	102.4
1961	102.1
1962	102.3
1963	102.2

Industrial Production Index for Manufacturing
Board of Governors of the Federal Reserve System

1957-1959 = 100

1955	97.3
1956	100.2
1957	100.8
1958	93.2
1959	106.0
1960	108.9
1961	109.7
1962	118.7
1963	124.9

Union Yarn Mills
(Jacksonville, Ala.)

- DX 1000 4/24/61: Talked to Henry Miller, Mgr. He showed me Owen-Ill price \$960/M and Southern Container [corrugated container manufacturer] price \$939/M. They use 1750 boxes per week. Said he would split the business if we would come up with a competitive price to Owen-Ill. Said he would not buy from Southern. They are in process of doubling their business. /s/Lloyd Duncan, Salesman.
- DX 1001 5/8/61: Talked to Henry Miller. He said he had a price of \$925 from Owen-Ill. /s/Lloyd Duncan, Salesman.
- DX 1002 5/15/61: Henry Miller, Mgr., signed order for 10 T/L. /s/Lloyd Duncan, Salesman.
- DX 1003 7/10/61: Henry Miller said Owen-Ill had cut their price to 770.70. and Container Corp. had a price of 773.00. /s/Lloyd Duncan, Salesman.
- DX 1004 7/28/61: Talked to Henry Miller. He said he would take T/L on our floor. Said he wanted to give us Aliceville business, but he couldn't pay us 917.00 and someone else 770.00. Talked to Mr. Tharpe [St. Joe General Mgr.] on the phone about this. /s/Lloyd Duncan, Salesman.
- DX 1005 9/25/61: Luke Houston [St. Joe Sales Mgr.] and I talked to Henry Miller, Mgr. He told us we could reenter order at \$770.00 since he had Mr. Tharpe's [St. Joe General Mgr.] letter which guaranteed price for rest of year. /s/Lloyd Duncan, Salesman.
- DX 1006 1/23/62: Part 1 of 1. Talked with Mr. Miller, told him effective March 10, 1962 our price would be \$847 per M.. He said we would certainly lose the business. He said if we lose it this time we will have a hard time getting it back even if our price is same. Mr. Miller said Jim Wood (Mengle) [Container Corp. division] took order last week for business for remainder of 1962 at

\$770 per M for Jacksonville Mill. Said Owen-III has not raised price. Mr. Miller showed me copy of order he gave Mengle. (See other page).

Part 2 of 1. Order to Mengal from Union Yarn Mills read as follows:

January 15, 1962

Requirements for #2 corrugated boxes 41½ x 19 x 27 3" OL 350 test, DW. \$770.60 Per M for balance of 1962. To be released in truck or carload lots. Deliveries to either Jacksonville Ala. or Aliceville Ala. or both. Price subject to revision upon increase or decline in market. All shipments to be prepaid.

Addressed to: Container Corporation of America, P. O. Box 389, Chattanooga, Tennessee.

/s/Lloyd Duncan, Salesman.

DX 1007 3/12/62: Mr. Miller said if we raise our price to 847 and Container Corp does same thing he will go back to Owen-III is not going to raise their price. /s/Lloyd Duncan, Salesman.

DX 1008 6/28/62: Mr. Miller gave me this information yesterday. Tri State Container Corp. cut our price to \$760.00. He showed me invoice #7662 from Tri State dated April 24, 1962 car PRR 602224 Seals 9877/78 showing price of \$760.00/M. Mr. Miller said Tri State contacted Mr. L. L. McLin at Union Underwear Co. in Bowling Green, Kentucky. They purchased 10 C/L's from Tri State. These are specifications on invoice.

3" OL St. Pl. 350 DW

41 5/16 x 18 15/16 x 27 1/16. /s/Lloyd Duncan, Salesman.



DIX-60

November 8, 1955

Mr. Carter Holbrook,
Carolina Container Company,
High Point, North Carolina.

Dear Carter:

We have your memorandum concerning Raven Cotton Mills;
and this is to advise that we have changed our records to
show their price as being \$1122.20-M in 3,000 lots.

We will use this price until it has been determined that one of
his regular suppliers has reduced it. If this happens, we
shall take the necessary action to meet competitive prices.

Very truly yours,



C-2911

#39 NEW YORK

L. B. PITTS

#524 RICHMOND

AUGUST 17, 1961

CONFIDENTIAL

I TRIED TO REACH BOTH YOU AND ARBUTHNOT TODAY ON THE PHONE. IN FACT, I HAVEN'T BEEN ABLE TO REACH ARBUTHNOT IN TWO DAYS. THIS MAKES IT VERY DIFFICULT IN VIEW OF THE MARKET CONDITIONS. I WAS HOPEFUL THAT WE WOULD BE ABLE TO COMMUNICATE WITH SOMEONE IN NEW YORK AT ALL TIMES DURING THESE LAST FEW DAYS OF AUGUST.

BOTH WE AND SEVERAL OTHER COMPETITORS SEEM TO BE HAVING DIFFICULTY WITH MEAD OUT OF DURHAM. TO GIVE YOU A CONCRETE EXAMPLE, WE HAVE BEEN A MAIN SUPPLIER, AND MEAD HAS NOT BEEN SUPPLYING, A FIRM CALLED STONEVILLE FURNITURE COMPANY, STONEVILLE, NORTH CAROLINA. ON AUGUST 8 THEY FURNISHED THIS COMPANY WITH A PRICE SHEET SIGNED BY A MAN NAMED MANESS. THE ITEM WAS A TABLE 24 X 36. THEIR PRICE WAS \$224.95 PLUS \$26.50 SET-UP AGAINST OUR PRICE OF \$237.65 PLUS \$26.50. IN VIEW OF THIS IT IS GOING TO BE VERY DIFFICULT FOR US TO RAISE THE PRICE 10%. THIS ACCOUNT HAS BEEN ON A \$12.35 MULTIPLIER OVER TWO YEARS.

THIS TYPE OF WILD QUOTING WILL CERTAINLY ENDANGER, IF NOT KILL, OUR ANNOUNCEMENT TO RAISE PRICES 10% UNLESS WE LOSE ALL OF OUR BUSINESS. I AM HOPEFUL THAT THEY WILL NOT CONTINUE TO CUT PRICES THAT ARE BELOW PRESENT LEVELS IN VIEW OF OUR ANNOUNCEMENT TO RAISE PRICES 10%.

R. GROHER, JR.

RGJR/ew

BLIND COPY TO W. D. ARBUTHNOT, #39



L. B. Pitts
39 New York

CCC-2994
W. B. Beans
613 Martinsville

October 11, 1961

Competitive Information - Head Containers

I have appraised very carefully, due to necessity, in the past two months the activities of Head Container in the sales districts of 612 and 613.

It is becoming increasingly apparent that Head Containers in this area are not following a constructive pricing pattern and it is obvious as far as the knowledge of our accounts go that they are reluctant to raise any prices wherein they have a major position. They are not following any estimating manuals with which we are acquainted and which are used in this area. We find many instances in our accounts where they have cut prices in late September and even in October. They are not seeking any market information. In conclusion, they will go to any length to maintain their present volume and customers and are striving by any means necessary to improve their volume position.

Bassett Furniture Industries: We have prepared this account since August 8th to accept an increase of a minimum of 10%. We find however that there has been no indication from Head to this customer that prices will be increased effective January 1, 1962. It will be impossible for us to raise this account which is expecting and receptive to an increase on that date unless Head takes action immediately. This increase should have been announced prior to October 1st since styles and prices are being developed now by the furniture industry for their October show from which 1962 business is developed.

Carolina Enterprises, Tarboro, N.C.: This is one of our newest and most valued accounts which we had virtually 100% until early this year. There have been several price reductions in this account by Richmond Container, Owens-Illinois and last but not least, Head. Head quoted a lower level in this account on September 12th than our old prices which were in effect prior to September 1st. Repeated attempts to get this situation corrected since we have raised this account 10% across the board were without avail. The customer tells us as of Monday, October 9th, that Head's prices have been guaranteed for 90 days.

Stoneville Furniture Company: Here again, Head quoted in early September prices under our prices that were effective prior to September 1st. This account too was raised by the three suppliers approximately 10%. There is some indication that this situation has been corrected but we are not sure

1025

CCC-2995

L. B. Pitts
39 New York

W. B. Beams
613 Martinsville

October 11, 1961

Competitive Information - cont'd

since there is one vendor with prices in this account approximately 5% under the suppliers.

To sum up this report I am attaching a copy of three memos from our Mr. R. L. Burrows indicating that the above information is being supplemented on moving and storage accounts, Grifton Garment Company, Grifton, N.C. and Dorothy Curtain Company of Rocky Mount, N.C.

W. B. Beams

WBB:rw

cc:

W. D. Arbuthnot 39
Robert Groner, Jr. 524

ccc-2875

PLAINTIFF'S
EXHIBIT47

SOUTHERN DISTRICT

DISTRICT SALES MANAGERS

1523 RICHMOND

JUNE 30, 1961

ATTACHED HERewith IS INFORMATION GIVEN TO ZONE 10 AND 11 FIDRE BOX ASSOCIATION MEETING AND IS FOR YOUR INFORMATION. YOU MAY READ IT TO YOUR OWN GROUP MEETINGS IF YOU SO DESIRE.

RGJr/ew

R. GROWER, JR.

"Continental Sales Policy"

ccc-2896

CONTINENTAL SALES POLICY

IN THE LIGHT OF THE RECENT ANTI-TRUST INVESTIGATIONS INTO THE ELECTRICAL INDUSTRY, OUR COMPANY HAS BECOME VERY MUCH CONCERNED WITH THE PROPER CONDUCT OF OUR BUSINESS. AS A RESULT, CERTAIN DEFINITE, CONCRETE POLICIES HAVE BEEN PUT FORTH BY OUR TOP MANAGEMENT. AMONG THESE THERE ARE DIRECT ORDERS TO ALL SALES PEOPLE TO BE VERY CAREFUL IN THEIR CONDUCT AND TO LIVE WELL WITHIN THE LAWS AND THE INTERPRETATION OF THE LAWS BY OUR COUNSEL. THIS MEANS THAT ANY INFORMATION OR CONVERSATIONS THAT ARE TO BE DESIRED BY ANYONE OTHER THAN CUSTOMERS SHALL BE CONFINED TO AREA GENERAL MANAGERS OR THEIR SUPERIORS.

WE ARE ALSO VERY MUCH CONCERNED WITH THE CHAOTIC PRICING CONDITIONS IN OUR INDUSTRY AND HAVE FORMULATED CERTAIN SALES POLICIES WHICH ARE PUBLIC INFORMATION, AND IN ORDER TO ALLOW ALL OF YOU TO UNDERSTAND THESE SALES POLICIES I WISH TO TAKE THIS OPPORTUNITY OF TELLING YOU THAT IN THE FIRST PLACE COMPETITION HAS, THROUGH INEFFICIENT AND INANE PRICING, ALREADY GIVEN TO THE TRADE MORE THAN THE RECENT PRICE REDUCTIONS IN RAW MATERIALS. WE DO NOT PROPOSE TO DEVIATE FROM A PRICING POLICY THAT WILL PRICE ALL OF OUR CAN BOXES AT THE CAN BOX PRICE LIST ORIGINALLY PUT FORTH BY OWENS-ILLINOIS. WE WILL NOT OBLIGATE OURSELVES ON FIXED PRICES FOR A PERIOD OF LONGER THAN 90 DAYS. WE WILL NOT SELL OUR PRODUCT, EVEN UNDER COMPETITIVE CONDITIONS, AT LESS THAN OUR TRUE COST INCLUDING OVERHEAD, AND WE FIGURE THIS TO BE ROUGHLY \$175.00 PER TON. WE WILL ENDEAVOR TO MERCHANDISE OUR PRODUCT AT A PROFIT AND WE ARE GOING TO TRY TO GET FROM \$200.00 PER TON UP FOR ALL OF OUR CORRUGATED CARTONS.

IT IS TO BE HOPED THAT OTHERS IN OUR FIELD WILL DECIDE TO DO AWAY WITH THE RUINOUS, LOW COST PRICING THAT THEY HAVE BEEN INDULGING IN FOR SOME TIME. I THINK MOST OF YOU KNOW ME OVER A PERIOD OF YEARS AND REALIZE THAT WE DO NOT INDULGE IN DOUBLE TALK. IT IS FURTHER REALIZED, I HOPE, THAT SOME OF THE PRICING THAT HAS BEEN GOING ON IN THE SOUTHEAST SHOULD BE IMMEDIATELY STOPPED SINCE IT REPRESENTS, REGARDLESS OF HOW THESE PEOPLE MIGHT RECEIVE THEIR BOARD WHETHER AT MARKET OR BELOW MARKET, A LOSS. WE CONSIDER THAT THE CHARGES PUT FORTH SEVERAL YEARS AGO IN THE CAROLINA MANUAL ARE FAIR AND WE ARE GOING TO TRY TO USE THESE ON ALL OCCASIONS. WE DO NOT PROPOSE TO BLINDLY TAKE THE WORD OF

CCC-2897

PURCHASING AGENTS AS TO COMPETITIVE PRICING. THIS POINT HAS LED PRICES DOWN DRASTICALLY IN SOME AREAS. WE FEEL THAT IT IS VERY BAD FOR OUR BUSINESS TO GO AROUND SHOUTING ABOUT RECENT PAPERBOARD REDUCTIONS. WHERE WE ARE NOT PRESENTLY SERVING AN ACCOUNT, WE WILL ENDEAVOR TO FIND A FAST-MARKET BEFORE QUOTING BLINDLY.

ANYONE WHO HAS ANY REAL OR IMAGINARY PROBLEMS WITH OUR FIRM CAN CALL ME. HOWEVER, NONE OF MY DISTRICT SALES MANAGERS NOR OTHER SALES PERSONNEL WILL BE AVAILABLE TO DISCUSS PRICING. WE PROPOSE THAT ALL DISCUSSIONS SHALL BE STRICTLY LEGAL ACCORDING TO THE INTERPRETATION OF THE LAW BY MALCOLM WHITE. WHEN I AM NOT AVAILABLE DUE TO TRAVELING, MR. ARBUTHNOT, SALES MANAGER FOR OUR CORRUGATED DIVISION, IS AVAILABLE AT MURRY HILL 2-1300 IN NEW YORK CITY.

INTER-OFFICE COMMUNICATION

FROM ATLANTA

PLAINTIFF'S
EXHIBIT

48

To Mr. J. P. Tarantino, Jr. Date July 31, 1961
 At Tampa From Lee J. Ross
 Subject PRICE INCREASE

C. G. [Signature]
 As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco.

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container
 Dixie Container
 Mead
 Mengel

Continental Can
 Union Bag
 Maxwell Bros.
 H. & D.

Warehouser
 International Paper

Not in attendance:

Owens Illinois
 Carolina Container
 Tri-State

Container Corp.
 St. Regis
 Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full.

ell
 LJR:sm



CCC-2440

OPR I WANT CONF CALL MADE TO FOUR PLACES CAN YOU TAKE THIS

OK

JN 196

NO288

AT445³

TY R661 AND THAT I WAS NOT SUPPOSE TO BE IN THERE

OK CAN I CUT OFF

YES THUO

CCC 524 RICHMOND GA PLS

RDY ON CONF TO ALL STAS PLS ANNC ON ROLL CALL

MIN PLS OPR

MIN PLS

OK GO AHEAD WITH ROLL CALL

EW ORLEANS READY

JACKSON JN 196 RDY ATL HEREP

TYLER RDY

THIS IS RICHMOND 848 TO ALL DISTRICT SALES MGRS FROM SOUTHERN

DISTRICT MGR 8-8-61 2-00 P M

NOTICE OF ADVANCE PRICES 9/1/61 SHOULD BE MAILED TO EVERY ACTIVE
ACCOUNT ON YOUR BOOKS IMMEDIATELY. A LIST OF THE ACCOUNTS TO WHOM
THIS NOTICE IS MAILED SHOULD BE COMPLIEDXXX COMPLIED.

COPIES OF THE LIST TOGETHER WITH A C XXX COPY OF OUR ANNOUNCEMENT
SHOULD BE CIRCULARIZED FULLY, SINCE THIS CAN BE MADE PUBLIC INFORMATION.

IF ANYONE DOES NOT UNDERSTAND THIS TELETYPE PLEASE PHONE ME

SIGNED R GRONER JR

TA U PLEASE ACK IN ORDER

RECD NEW ORLEANS

RCD JACKSON RECD ATLANTA

RECD TYLER

TH U DISC

V

V



5.9

MEA # 00744



Mr. David J. Bloom
c/o Mead-Atlanta Paper Co.
950 W. Marietta Street, N.W.
Atlanta 2, Ga.

AUG 11 1958

CORRUGATED CONTAINER



DIVISION OF
CONTINENTAL CAN COMPANY, INC.
801 COOLIDGE STREET, P. O. BOX 324, NEW ORLEANS 8, LA.

FORM 101 5-58

MEA #00744

To our customers

Effective with September 1st shipments, our prices on corrugated fibreboard containers and allied products will be increased a minimum of 10%. The recently announced increase in the price of semi-chemical corrugating medium effective September 1st and increases in other manufacturing cost which have been absorbed for the past four years make this necessary.

Contractual prices will be increased accordingly as soon as the terms of the contracts permit. Published price lists are being reviewed for revision.

We thank you for your patronage and your continued appreciation of our problems as one of our suppliers.

August 7, 1961

CONTINENTAL



CAN COMPANY

August 9, 1961.

We have advised the attached list of customers of the price increase in compliance with the enclosed card.

Continental Can Company, Inc.,
Corrugated Container Division.

A to Z Paper Company
Acme Distributing Company
Air Control Products of Louisiana
Alexandria Bedding Co.
All South Record Dist. Company
American Box & Tag Company
American Brewing Company
American Can Company
American Manufacturing Corp. Inc.
American Metal Works, Inc.
American Pad & Textile Company
American Standard
Amos C. Harris Can Company
Mr. Tony Ancona
Anheuser Busch, Inc.
Animal Trap Company of Mississippi
Animatic Animal Care Prod., Inc.
Arbo Products
Armstrong Contracting & Supply Co.
Art-Vertising Displays
Associated Distributing Co.
Atlas Lubricant Corp.
Mr. Calvin J. Authement
Avoncraft Construction Co.
Bagert Cleaners
Bagur Southern Souvenir Mfg. Co.
Mike Baker Brick Co.
Barq's Inc.
Bartwell, Inc.
Bayou Candy Company
Harry L. Beeson Eggs
Mr. Earl Bergeron
H. J. Bergeron Pecan Shelling Plant
Better Brands, Inc.

Bienville Furniture Mfg. Co.
 Billups Wholesale Supply Co.
 Bischoff Brothers Seafood Co.
 Bland Banana Company
 Blue Ribbon Cleaners
 Bluff Creed Industries
 J. H. Bonek & Co. Inc.
 A. J. Bordelon Packing Co.
 The Borden Company
 Brandt Corporation
 Bréaux & Daigle Fish Co.
 Brennan's Pre-Pared Potato Company
 Brown-Miller Company
 Brown-Roberts Hardware & Supply Co. Ltd.
 Brown's Velvet Dairy Products
 Building Specialties
 C & F Packing Company
 C & W Transfer & Storage
 Cajun Chef Products
 Carrtone Laboratories
 Cascade, Inc.
 The Celotex Corporation
 Claitor's Book Store
 Clean Linen Service
 Coca Cola Company
 Colonial Macaroni Mfg. Co.
 Colonial Molasses Co. of La.
 Colonial Sugars Company
 Consolidated Companies, Inc.
 Continental Can Co. Inc., Metal Division
 Conway Woodworking Company
 Cotton Bros. Baking Co.
 Cotton Products Company, Inc.
 Coudrain Novelties
 Crane Company
 Crawford Wholesale Florist & Supplies, Inc. BR.
 Crawford Wholesale Florist & Supplies, Inc. NOLA
 Crescent Banana Sales
 Crescent Bed Co. Inc.
 Crescent City Gun Club
 Crescent Electronics
 Crescent Memorial Service, Inc.
 Crosby Forest Products

Cutcher Canning Company
Cute Togs of New Orleans, Inc.
Dameron Pierson Co. Ltd.
Dauterive Appliance & Furniture Co.
Dedeaux Packing Company
Deep River Poultry
Deep South Candle Co.
Delta Match Corp.
Delta Petroleum Co. Inc.
Charles Dennery Inc.
Dezauche & Sons
Dickey Foods, Inc.
Dixie Brewing Co. Inc.
Dixie United, Inc.
Dixon Plywood Corp.
Dohmann & Franchebois
Dow Chemical Co.
Drake, Thompson & Co. Inc.
Drew Blan Records
Dundee Tailoring Co.
Steven Dupuis & Bros.
Duralast Products Corp.
Durhams Wholesale Distributors
Effo Banana Sales Corp.
Elmer Candy Company
Elmer's Find Foods
Estorge Drug Co.
Evans Cooperage Co.
F.M.C. Corp.
Fairco Export Company
Falstaff Brewing Company
Famous Sternberg Inc.
Faulk's Duck Call Co.
Florida Jalousies of Louisiana, Inc.
Ford Div. Ford Motor Co.
Foster Aluminum
Foster Canvas Products Co. Inc.
Franklin-Printing Co.
Frey Bros. Inc.
L. A. Frey & Sons, Inc.
Friedrichs Mfg. Co.
Garsaud Fine Foods
Gator Distributors, Inc.

Gemtone, Inc.
General Beverage Distributor
General Marine Corp. (Boatel)
Genuine Parts Co.
Georgia Pacific Corp.
Gerhardt's Inc.
Glenbrook Laboratories
The Glidden Company
Golden Gate Mfg. Co.
Goodman & Beer
Gordy Salt Co.
W. R. Grace & Co. Polymer Chem. Div.
Graham Seafood Company
Grand Caillou Packing Co.
Great Southern Wirebound Box Co.
Gulf Corporation
Gulf Cotton Co. Inc.
Gulfport Glass Corp.
Gulfport Quick Freeze
Gulf States Asphalt
Gulf Seafood Co.
Haas Davis Packing Co.
Halco Lighting Mfg. Co.
Hall Drum
Hammond-Baton Rouge Brick Co.
Hardy Brothers
C. V. Harold Rubber Co.
E. J. Hart Co. Ltd.
Hausmann Jewelry Co.
Hawkins Distributing Company
Heebe's Bakery Inc.
Hemisphere International Corp.
Henderson Sugar Refinery Co.
Hill Hentschel Co.
Hillyer-Deutsch-Edwards, Inc.
D. H. Holmes Co. Ltd.
George A. Hormel & Company
Humble Oil & Refining Co. Inc.
Huval Baking Co. Inc.
Ingram Oil Company
Inland Steel Container Co.
Industrial Electric Inc.
International Aluminum Corp.

International Harvester Company
 International Lubricant Corp.
 International Van Service, Inc.
 Ipik Plywood Company
 J & M Beverage Co.
 Jacobs Candy Company
 Jack's Cookie Corporation
 Jackson Brewing Company
 Javelin Boats, Inc.
 Jones & Laughlin Steel Corp.
 Johns-Manville Products Corporation
 Juval Manufacturing Company
 Kaiser Aluminum & Chemical Corp.
 Kalvar Corporation
 Kohlmann Box Company, Inc.
 Krim-Ko Corporation
 Hubert Lafont Shrimp Co.
 Lally, Berthelson & Welsh
 La-Mo Refractory Supply Company
 H. W. Lay & Company
 Le Cour Corporation
 Lengsfeld Brothers, Inc.
 Lighthouse for the Blind of New Orleans
 Louisiana Coffee & Spice Company
 Louisiana Department of Agriculture & Immigration
 Louisiana Department of Highways
 Louisiana Garment Manufacturing Co. Inc.
 Louisiana Hatcheries
 Louisiana State Board of Health
 Louisiana State Rice Milling Co.
 Louisiana State University
 Lumberton Manufacturing Co.
 Lykes Bros. Steamship Company, Inc.
 C. C. Lyons & Sons
 Magnolia Liquor Company, Inc.
 Mahler, Inc.
 Maison Blanche Company
 Malter Supply Company, Inc.
 Maritrop Trading Corporation
 Martin Bros.
 Ed Martin Seafood Company
 McComb Wood Products Company
 T. E. Mercer Dist. Co.

Mat-La-Ceramics, Inc.
 John Mayer Company
 Mid State Distributors, Inc.
 Mistretta & Sotile Candy Company
 Mobile Association of the Blind
 Monsanto Chemical Co.
 A. Montz
 Morgan City Freezer & Cold Storage
 John Morrell & Company
 Morrison Cleaners
 Morrison Merchandising Company
 Movie Star, Inc.
 Nat Buring Packing Company, Inc.
 National Food Products, Inc.
 National Gypsum Company
 National Sales, Inc.
 National Sugar Refining Co.
 Naugatuck Division, U.S. Rubber Company
 New Orleans Boxing Plant
 New Orleans Cuisine, Inc.
 New Orleans Import Co., Ltd.
 New Orleans Metal Company, Inc.
 New Orleans Sash & Door Company
 Newport Industries, Division of Heyden Chemical Corp.
 Newport Industries Company
 Nola Candle Company
 Nu Vent Awning Company
 Olin Mathieson Chemical Company
 Opelousas Sweet Potato Company
 Orleans Produce Company
 Ott's Pet Shop
 Ouilliber-Coffee Company
 Package Engineering Corporation
 Donald Palmer
 Pan American Furniture Company
 Parke Davis & Company
 A. T. Patton Meat Market
 Pelican Printing Company
 Pellerin Milnor Corporation
 Pendleton Lyons Moving & Storage
 Pittsburg Plate Glass Company
 Plastic Applicators, Morgan City
 Plastic Applicators, Houston

Plymouth Cordage Company
 Post Scripts, Inc.
 Products Research Service, Inc.
 Professional Pharmacy
 Pullen Molded Products, Inc.
 Quality Banana Company
 Quality Reconditioning Service
 Rudolph Ramelli
 Rausch Naval Stores
 Rayne Wholesale Grocers
 Real Kill Products Company, Division Cook Chemical, BR
 Real Kill Products Company, Division Cook Chemical, KC,
 Mo.
 Red Star Yeast & Products Co., Belle Chasse, La.
 Red Star Yeast & Products Co., Milwaukee
 William B. Reily & Co. Inc.
 William B. Reily & Co. Inc., Luzianne Instant Div.
 Reily Chemical Co.
 Renewed Auto Parts
 Reuthers Seafood
 Rickert & Laan, Inc.
 Ric Records, Inc.
 Robinson Canning Company
 Rosen Sanitary Wiping Cloth Company
 Royal Electronics
 The Ruberoid Co.
 J. H. Rutter-Rex Manufacturing Co. Inc.
 S & G Manufacturing Co.
 Sanye Bakers Supply Co.
 Sazerac Co. Inc.
 Schneller Service
 School Pictures, Inc.
 Schott & Co. Inc.
 Scott Paper Co.
 Seagrams Distillers Company
 Security Storage & Van Co. Inc.
 Shell Oil Co.
 Simplex Manufacturing Co.
 Sinclair & Valentine
 Slumber Shop
 Smith's Bakery, Inc.
 Snider's Poster Process Co.
 Southern Ford Tractor Corp.

Southern Paper Company
Southern Railway System
Southern Shell Fish Co. Inc.
Southern Tool & Equipment Co.
Southland Canning & Packing Company
Standard Coffee Co. Inc.
Standard Fruit Co.
Stanley-Rose Company, Inc.
Steel Stamping Inc.
Stelley Brothers Produce Company
Stevens Band Paper Company
Stokes Distributing Company
Bob Stone Cordage Company
F. Strauss & Sons
Sugar Bowl Dehydrating Company, Inc.
A. C. Suhren Corp.
Sunny South Distributors, Inc.
Sunrise Bakery Inc.
Superior Candy Co.
Superior Mills Division of B. V. D.
Swift & Company
The Texas Company
Thompson-Hayward Chemical Company
Thompson Packers
Dr. Tichenor Antiseptic Company
Topform, Inc.
B. F. Trappey's Sons, Inc.
William Twickler & Sons
United Rice Milling Company
Urania Lumber Co.
Vignes Bombet Co.
Viking Packing Co.
Ward Baking Co.
Weysham Bakery
Wiggins Manufacturing Co. Inc.
Wurzburg Bros. Incorporated
Zetz-Seven-Up Bottling Company

PLAINTIFF'S
EXHIBIT

54

W 21201

June 1961

Discussion regarding possible price increase
alternative methods

① Flat percentage increase across the board.

Pro

Easy to administer
Refuses need for communications
Easy enforcing

Con

Treats all accounts the same - both
high and low levels - thereby increasing
differentials,
which probably has major change in
the accounts handled by each customer
because -

- ① Quaintness - Lack of support
- ② Tends to increase the importance
of differentials and shifting
within accounts.

W 21202

② Paper List or Formula

P.O.

Simplify communications
Establish a base

Con

A price list is generally a sailing -
Would be necessary, though, to
reduce some bills. Then could
increase - partly due to contracts,
large volume accounts, etc.
Prochance of a list being rejected at
this time. Deals will continue to
increase.

Don't know how to phrase in simple
enough form. - Flat per lb. of H
considered inadequate.

How would list be placed? - Must be
high enough to allow independents
to make a reasonable return.

6252

How much we handle quantity differentials?
Zone differentials.

U11 03353

W 21203

Relative published price of bond?

③ Select 10 accounts and announce
increase 2 or 3 weeks in advance.

Should know within a week what
they intend to do from their position
in the market place.

If successful - about a week later a
new item would be starting something
to the effect that several major companies
had raised prices on whole selling prices

some fainter

X

67-52

UNI 03354



W 20821

7/28/61

CONFIDENTIALCONFIDENTIALPRICING POLICY

- (1) Notify all customers our price will be increased _____% (between 10% and 15%) effective on all shipments made after August 15th. *Av. 12%*

Priority

- (a) Accounts we share with people who have already announced.
- (b) Sheet Accounts.
- (c) Accounts in which we think we will have an opportunity to meet.
- (d) Others.

Because of our position in the southeast, we should immediately inform at least one of the very low priced accounts that we are increasing their price 14%, letting it be known to our competitors immediately after the fact.

- (2) Increase contract and special agreement accounts 10% as they terminate. Until they come up, honor existing levels. This does not mean that we shouldn't make a strong attempt to revise prior to termination because of general market conditions.
- (3) Hold new price guarantees to 30 days except where there has been a history of longer agreements. Limit all guarantees to not more than 90 days.
- (4) Do not make any aggressive move for the purpose of gaining tons until advised by New York.
- ✓ (5) Before reducing the new (+ 10% or more) price, make a reasonable attempt to confirm the guidance given by a buyer. It would be desirable to confirm all reductions of this nature.

W 03416

1/20/22

- (6) Honor orders now on the books which specify shipment after August 13.
- (7) Orders received now for shipment after August 13 are to be priced at least 10% above the last price.
- (8) Withdraw bids now in the hands of customers and prospects which have not been acted upon, making certain there are none still open on August 13.
- (9) Before signing new contracts, even at 10% higher level, fight for a market clause allowing negotiations to adjust price up as well as down on the basis of general market conditions.
- (10) Limit price conversations to text attached.
- (11) Report to either L. A. Wulff or F. E. Kneip daily between 3 P.M. and 4:30 P.M., your time, giving a summary of action for the day.

same form as p.

PLAINTIFF'S
EXHIBIT56

W 21204

LIMITATIONS WHICH HAVE BEEN PLACED ON TELEPHONE CONVERSATIONSHAVING TO DO WITH MARKET CONDITIONS*about 8/7***Example #1: Announcing Price Increase:**

"We have increased prices at XYZ account 10% effective with shipments on and after September 1. All items are included except the 1042 and 1154 boxes which went up 12%. The increase applies to all delivery points".

Example #2: Calling a Supplier for Market Information:

"May I have your most recent price on box 1042 in XYZ account? Please give me base price and setup separately, delivered to Hometown, Indiana. What cash discount terms apply? Does this price represent a recent increase? Is this a quotation or an invoice?"

Example #3: Answer to inquiry for our price levels in a given account:

"Our price on item 1042 is \$187.00 per M in lots of 5,000 delivered to Hometown, Indiana, less 1% 15 net 30. We last shipped the item at \$170.00 in a 5,000 lot on July 29".

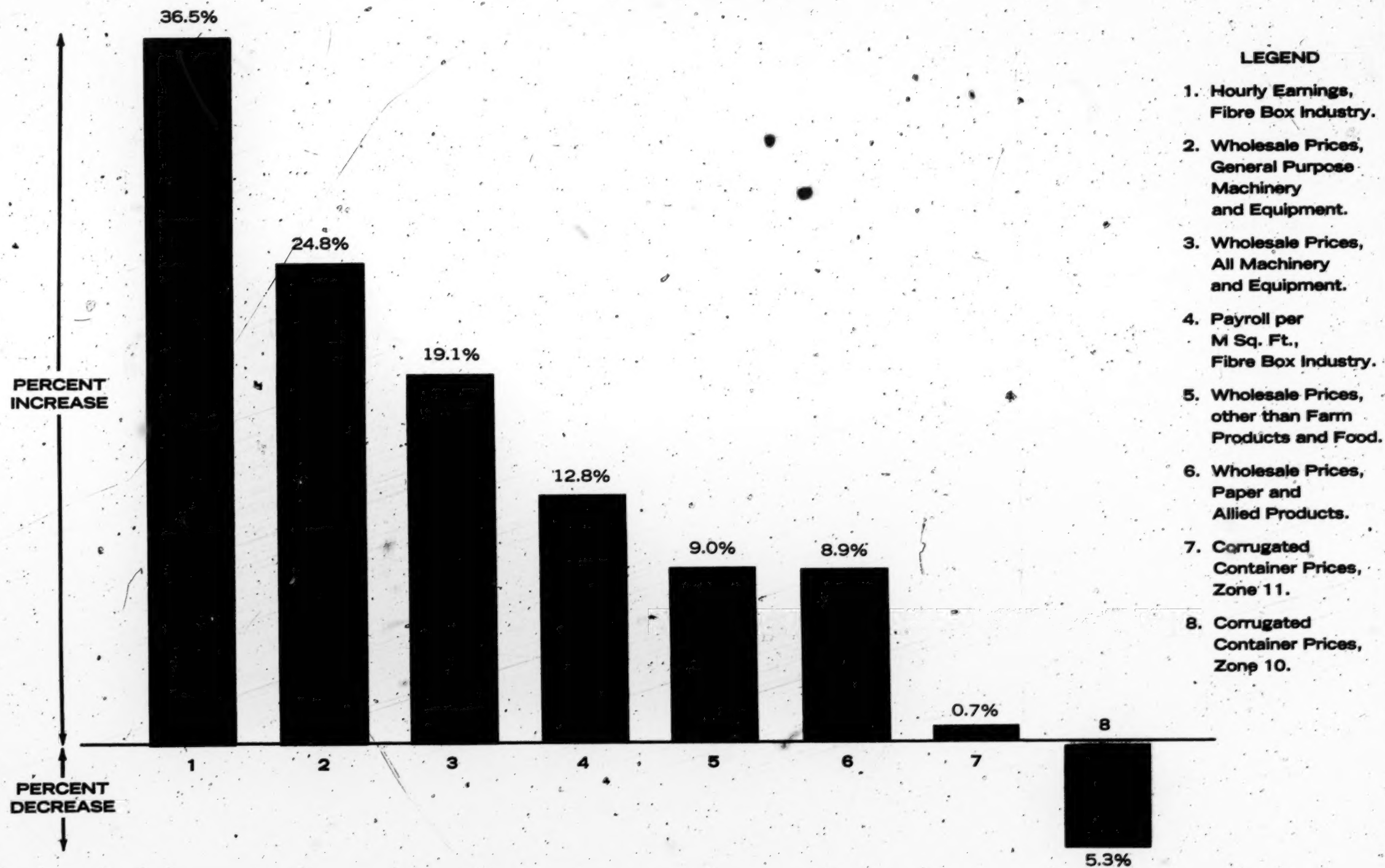
Example #4: Call to confirm reported price reduction:

"We have been told that your price has been reduced on item 1042 from \$187.00 to \$180.00 in XYZ account. Will you confirm this?"

Sales Managers only on the Phone.

No philosophizing.

**PERCENT INCREASE/DECREASE
VARIOUS PRICE OR COST INDICES
1955 vs. 1963**



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965, pages 1-10.

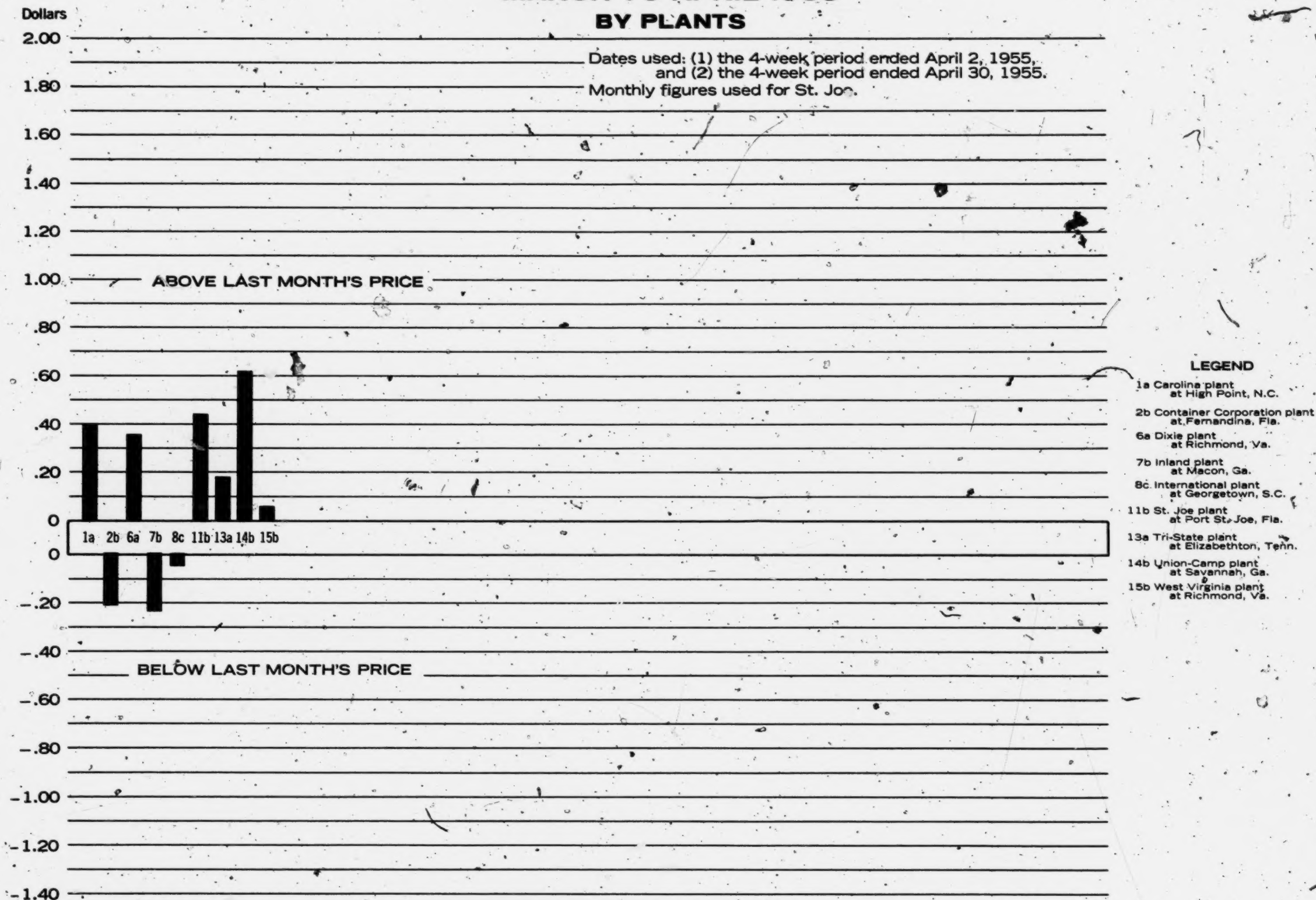
VARIANCE FROM LAST MONTH'S PRICE BY PLANTS

The charts in this section represent box price changes as shown in Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965, for each of the plants included in such Exhibit, between March and April and between September and October of each of the years 1955 to 1963. See also Paragraph 59 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.

For each company, except for St. Joe, included in these charts the figures represent 4-week averages for each plant. Each month is represented by the 4-week period ended closest to the last day of that month, except for 1963. In that year, figures are shown up to the date of the complaint (October 14, 1963) and hence the 4-week periods ended September 21, 1963 and October 19, 1963 are used. For St. Joe, its full calendar month figures are used throughout.

VARIANCE FROM LAST MONTH'S PRICE **MARCH TO APRIL 1955** **BY PLANTS**

Dates used: (1) the 4-week period ended April 2, 1955,
 and (2) the 4-week period ended April 30, 1955.
 Monthly figures used for St. Joe.



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1955 BY PLANTS

Dollars

2.00

1.80

1.60

1.40

1.20

1.00

ABOVE LAST MONTH'S PRICE

.80

.60

.40

.20

0

1a 2b 6a 7b 8c 11b 13a 14b 15b

0

-.20

-.40

-.60

-.80

-1.00

BELOW LAST MONTH'S PRICE

-1.20

-1.40

Dates used: (1) the 4-week period ended October 1, 1955,
and (2) the 4-week period ended October 29, 1955.
Monthly figures used for St. Joe.

LEGEND

- 1a Carolina plant at High Point, N.C.
- 2b Container Corporation plant at Fernandina, Fla.
- 6a Dixie plant at Richmond, Va.
- 7b Inland plant at Macon, Ga.
- 8c International plant at Georgetown, S.C.
- 11b St. Joe plant at Port St. Joe, Fla.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14b Union-Camp plant at Savannah, Ga.
- 15b West Virginia plant at Richmond, Va.

Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1956 BY PLANTS

Dollars

2.00

1.80

1.60

1.40

1.20

1.00

ABOVE LAST MONTH'S PRICE

.80

.60

.40

.20

0

- .20

- .40

- .60

- .80

- 1.00

BELOW LAST MONTH'S PRICE

- 1.20

- 1.40

Dates used: (1) the 4-week period ended March 31, 1956,
and (2) the 4-week period ended April 28, 1956.
Monthly figures used for St. Joe.

LEGEND

1a Carolina plant
at High Point, N.C.

2b Container Corporation plant
at Fernandina, Fla.

2c Container Corporation plant
at Winston-Salem, N.C.

2d Container Corporation plant
at Chattanooga, Tenn.

2e Container Corporation plant
at Knoxville, Tenn.

2f Container Corporation plant
at Nashville, Tenn.

4a Crown Zellerbach plant
at Miami, Fla.

4b Crown Zellerbach plant
at Tampa, Fla.

4c Crown Zellerbach plant
at Atlanta, Ga.

4d Crown Zellerbach plant
at Greenville, S.C.

6a Dixie plant
at Richmond, Va.

7b Inland plant
at Macon, Ga.

8c International plant
at Georgetown, S.C.

11b St. Joe plant
at Port St. Joe, Fla.

13a Tri-State plant
at Elizabethton, Tenn.

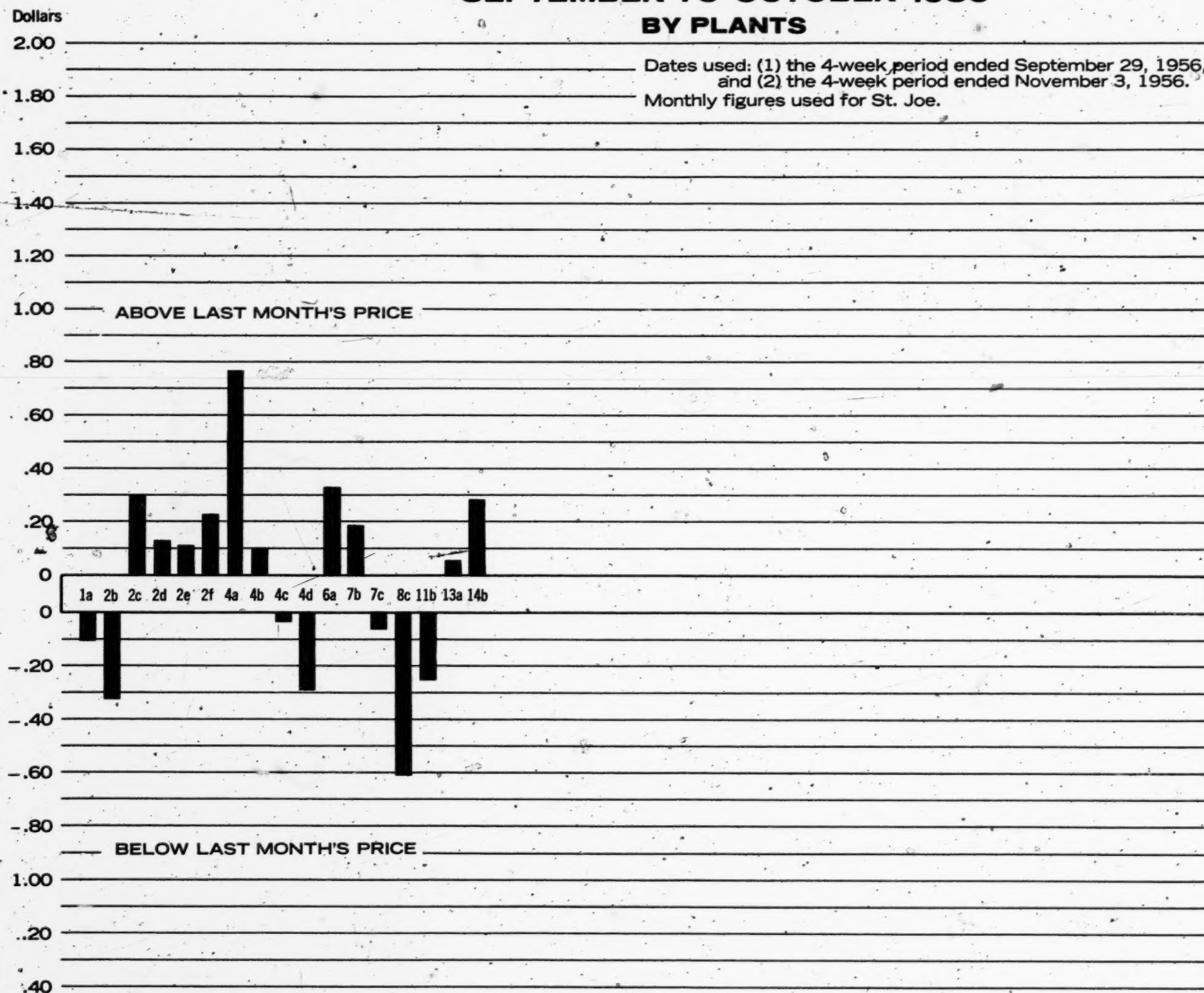
14b Union-Camp plant
at Savannah, Ga.

15b West Virginia plant
at Richmond, Va.

1a 2b 2c 2d 2e 2f 4a 4b 4c 4d 6a 7b 8c 11b 13a 14b 15b

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1956 BY PLANTS

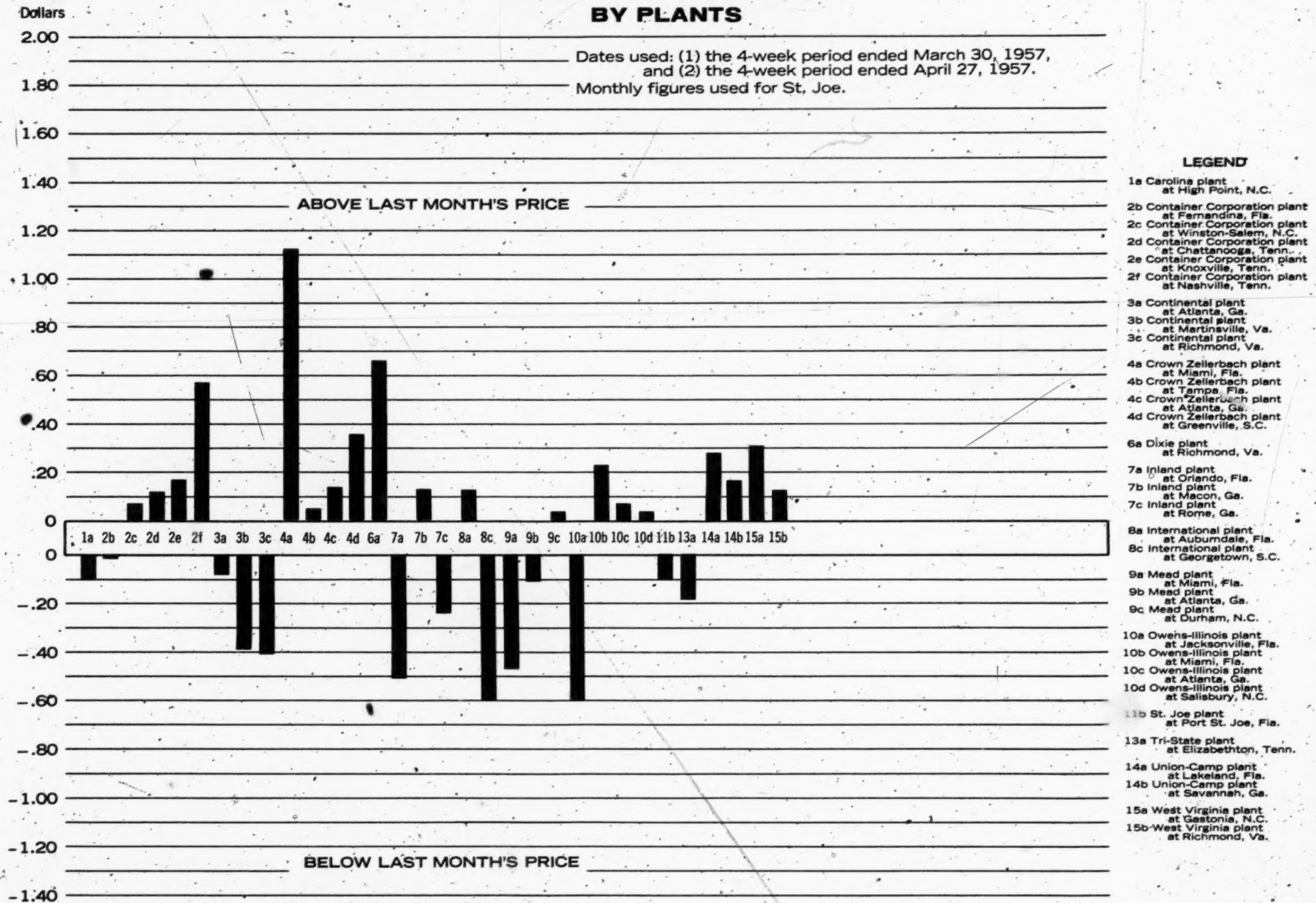
Dates used: (1) the 4-week period ended September 29, 1956,
and (2) the 4-week period ended November 3, 1956.
Monthly figures used for St. Joe.



LEGEND

- 1a Carolina plant at High Point, N.C.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 6a Dixie plant at Richmond, Va.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8c International plant at Georgetown, S.C.
- 11b St. Joe plant at Port St. Joe, Fla.
- 13a TriState plant at Elizabethton, Tenn.
- 14b Union-Camp plant at Savannah, Ga.

VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1957 BY PLANTS



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1957 BY PLANTS

Dollars

2.00

1.80

1.60

1.40

1.20

1.00

.80

.60

.40

.20

0

-.20

-.40

-.60

-.80

-1.00

-1.20

-1.40

Dates used: (1) the 4-week period ended September 28, 1957,
and (2) the 4-week period ended November 2, 1957.
Monthly figures used for St. Joe.

ABOVE LAST MONTH'S PRICE

BELOW LAST MONTH'S PRICE

LEGEND

- 1a Carolina plant at High Point, N.C.
- 2a Container Corporation plant at Lexington, Ky.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 3a Continental plant at Atlanta, Ga.
- 3b Continental plant at Martinsville, Va.
- 3c Continental plant at Richmond, Va.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 6a Dixie plant at Richmond, Va.
- 7a Inland plant at Orlando, Fla.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8a International plant at Auburndale, Fla.
- 8c International plant at Georgetown, S.C.
- 9a Mead plant at Miami, Fla.
- 9b Mead plant at Atlanta, Ga.
- 9c Mead plant at Durham, N.C.
- 10a Owens-Illinois plant at Jacksonville, Fla.
- 10b Owens-Illinois plant at Miami, Fla.
- 10c Owens-Illinois plant at Atlanta, Ga.
- 10d Owens-Illinois plant at Salisbury, N.C.
- 11b St. Joe plant at Port St. Joe, Fla.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14a Union-Camp plant at Lakeland, Fla.
- 14b Union-Camp plant at Savannah, Ga.
- 15a West Virginia plant at Gastonia, N.C.
- 15b West Virginia plant at Richmond, Va.
- 16b Weyerhaeuser plant at Tampa, Fla.

1a 2a 2b 2c 2d 2e 2f 3a 3b 3c 4a 4b 4c 4d 6a 7a 7b 7c 8a 8c 9a 9b 9c 10a 10b 10c 10d 11b 13a 14a 14b 15a 15b 16b

1.77

VARIANCE FROM LAST MONTH'S PRICE **MARCH TO APRIL 1958** **BY PLANTS**

Dollars

2.00

1.80

1.60

1.40

1.20

1.00

.80

.60

.40

.20

0

0

-.20

-.40

-.60

-.80

-1.00

-1.20

-1.40

Dates used: (1) the 4-week period ended March 29, 1958,
 and (2) the 4-week period ended May 3, 1958.

Monthly figures used for St. Joe.

ABOVE LAST MONTH'S PRICE

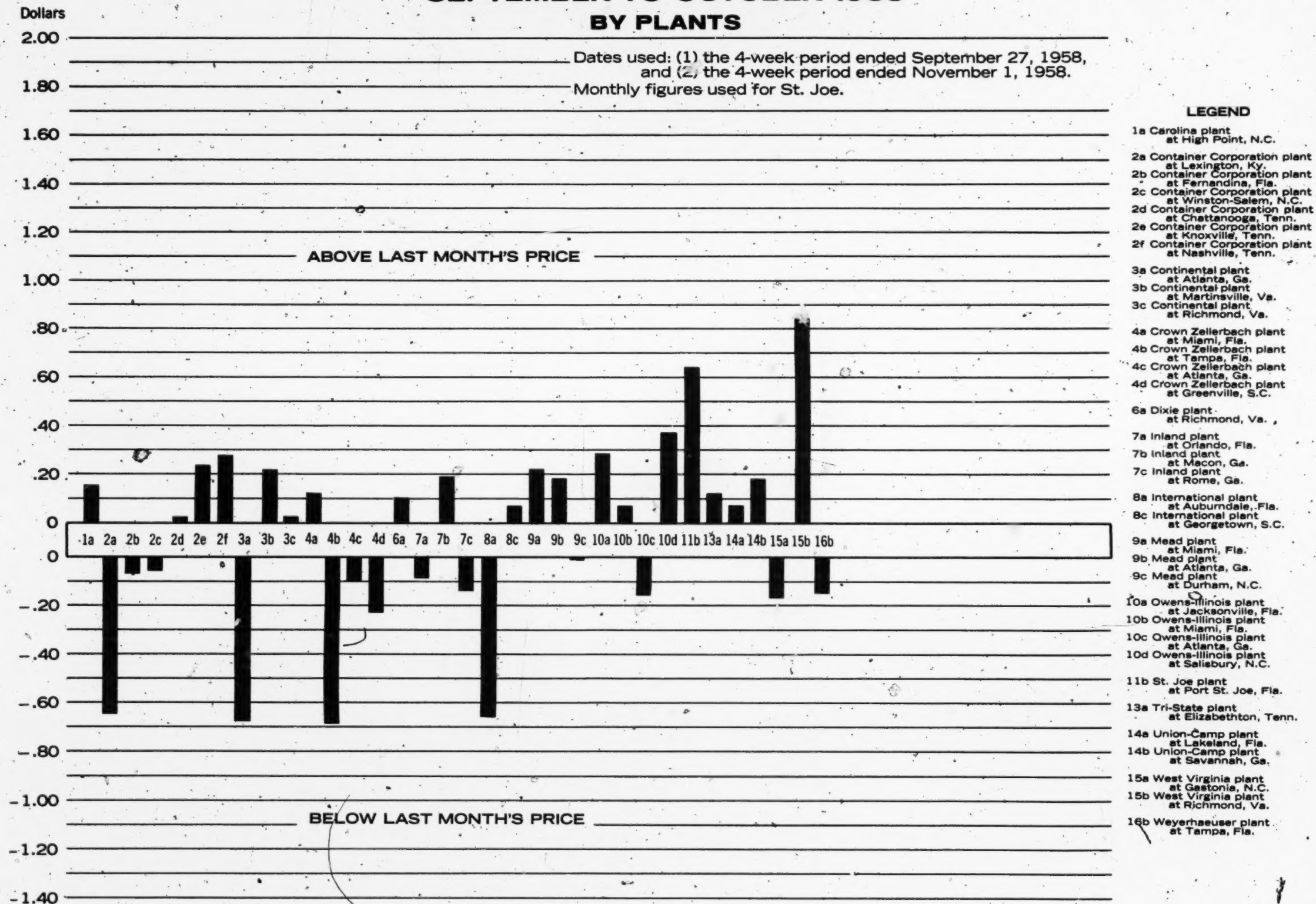
BELOW LAST MONTH'S PRICE

LEGEND

- 1a Carolina plant at High Point, N.C.
- 2a Container Corporation plant at Lexington, Ky.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 3a Continental plant at Atlanta, Ga.
- 3b Continental plant at Martinsville, Va.
- 3c Continental plant at Richmond, Va.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 6a Dixie plant at Richmond, Va.
- 7a Inland plant at Orlando, Fla.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8a International plant at Auburndale, Fla.
- 8c International plant at Georgetown, S.C.
- 9a Mead plant at Miami, Fla.
- 9b Mead plant at Atlanta, Ga.
- 9c Mead plant at Durham, N.C.
- 10a Owens-Illinois plant at Jacksonville, Fla.
- 10b Owens-Illinois plant at Miami, Fla.
- 10c Owens-Illinois plant at Atlanta, Ga.
- 10d Owens-Illinois plant at Salisbury, N.C.
- 11b St. Joe plant at Port St. Joe, Fla.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14a Union-Camp plant at Lakeland, Fla.
- 14b Union-Camp plant at Savannah, Ga.
- 15a West Virginia plant at Gastonia, N.C.
- 15b West Virginia plant at Richmond, Va.
- 16b Weyerhaeuser plant at Tampa, Fla.

1a 2a 2b 2c 2d 2e 2f 3a 3b 3c 4a 4b 4c 4d 6a 7a 7b 7c 8a 8c 9a 9b 9c 10a 10b 10c 10d 11b 13a 14a 14b 15a 15b 16b

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1958 BY PLANTS



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

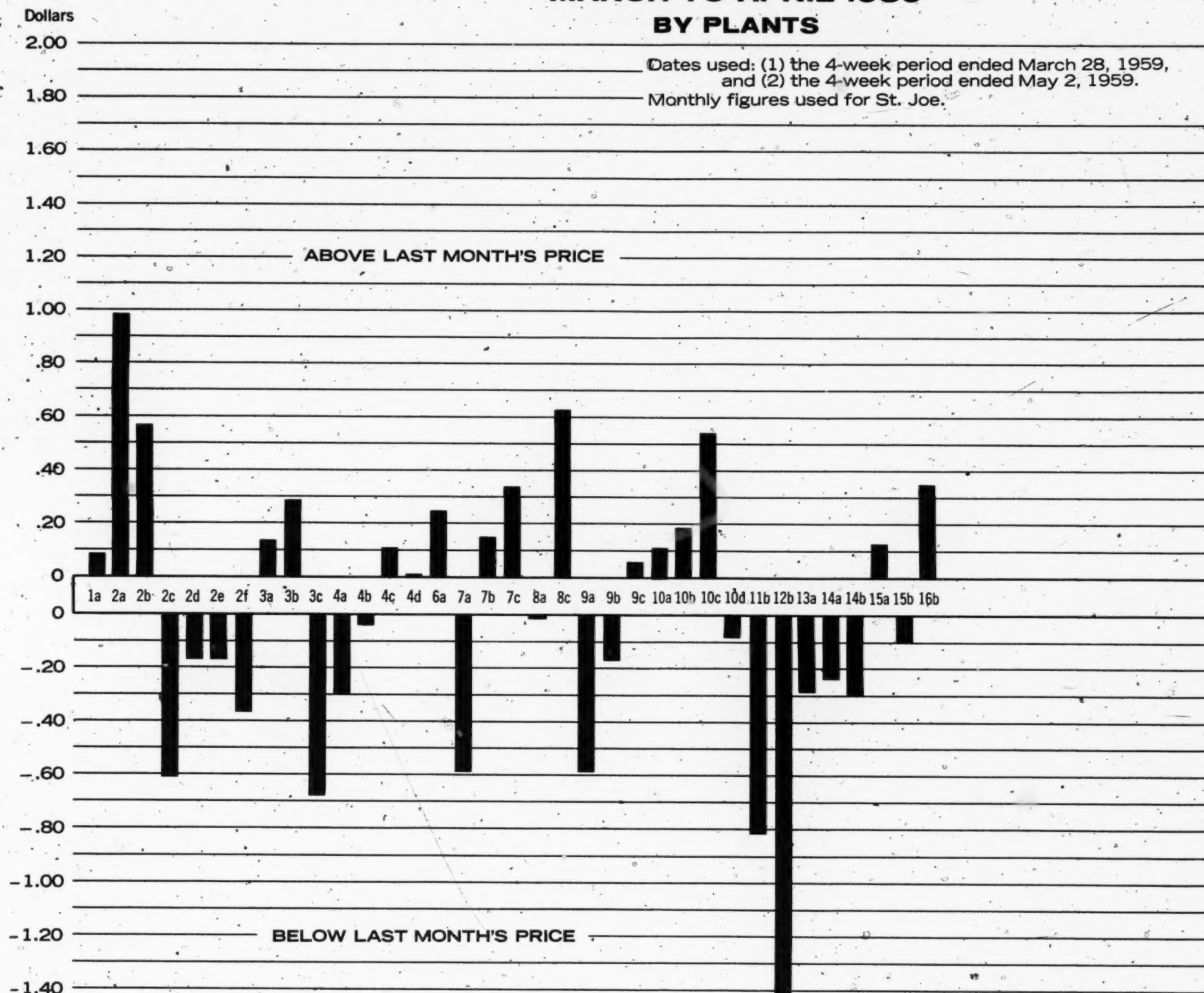
VARIANCE FROM LAST MONTH'S PRICE **MARCH TO APRIL 1959** **BY PLANTS**

Dates used: (1) the 4-week period ended March 28, 1959,
 and (2) the 4-week period ended May 2, 1959.

Monthly figures used for St. Joe.

LEGEND

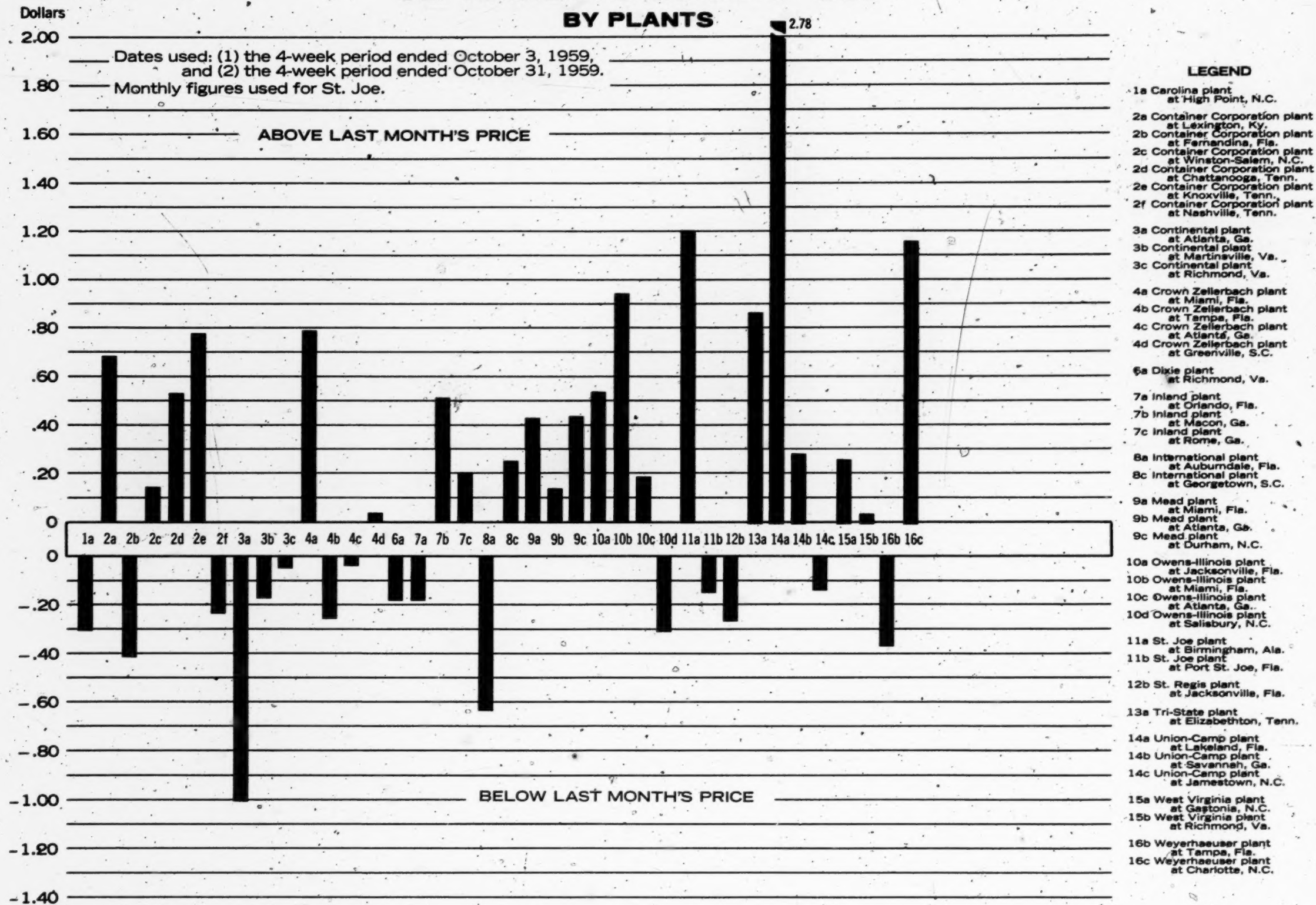
- 1a Carolina plant at High Point, N.C.
- 2a Container Corporation plant at Lexington, Ky.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 3a Continental plant at Atlanta, Ga.
- 3b Continental plant at Martinsville, Va.
- 3c Continental plant at Richmond, Va.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 6a Dixie plant at Richmond, Va.
- 7a Inland plant at Orlando, Fla.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8a International plant at Auburndale, Fla.
- 8c International plant at Georgetown, S.C.
- 9a Mead plant at Miami, Fla.
- 9b Mead plant at Atlanta, Ga.
- 9c Mead plant at Durham, N.C.
- 10a Owens-Illinois plant at Jacksonville, Fla.
- 10b Owens-Illinois plant at Miami, Fla.
- 10c Owens-Illinois plant at Atlanta, Ga.
- 10d Owens-Illinois plant at Salisbury, N.C.
- 11b St. Joe plant at Port St. Joe, Fla.
- 12b St. Regis plant at Jacksonville, Fla.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14a Union-Camp plant at Lakeland, Fla.
- 14b Union-Camp plant at Savannah, Ga.
- 15a West Virginia plant at Gastonia, N.C.
- 15b West Virginia plant at Richmond, Va.
- 16b Weyerhaeuser plant at Tampa, Fla.



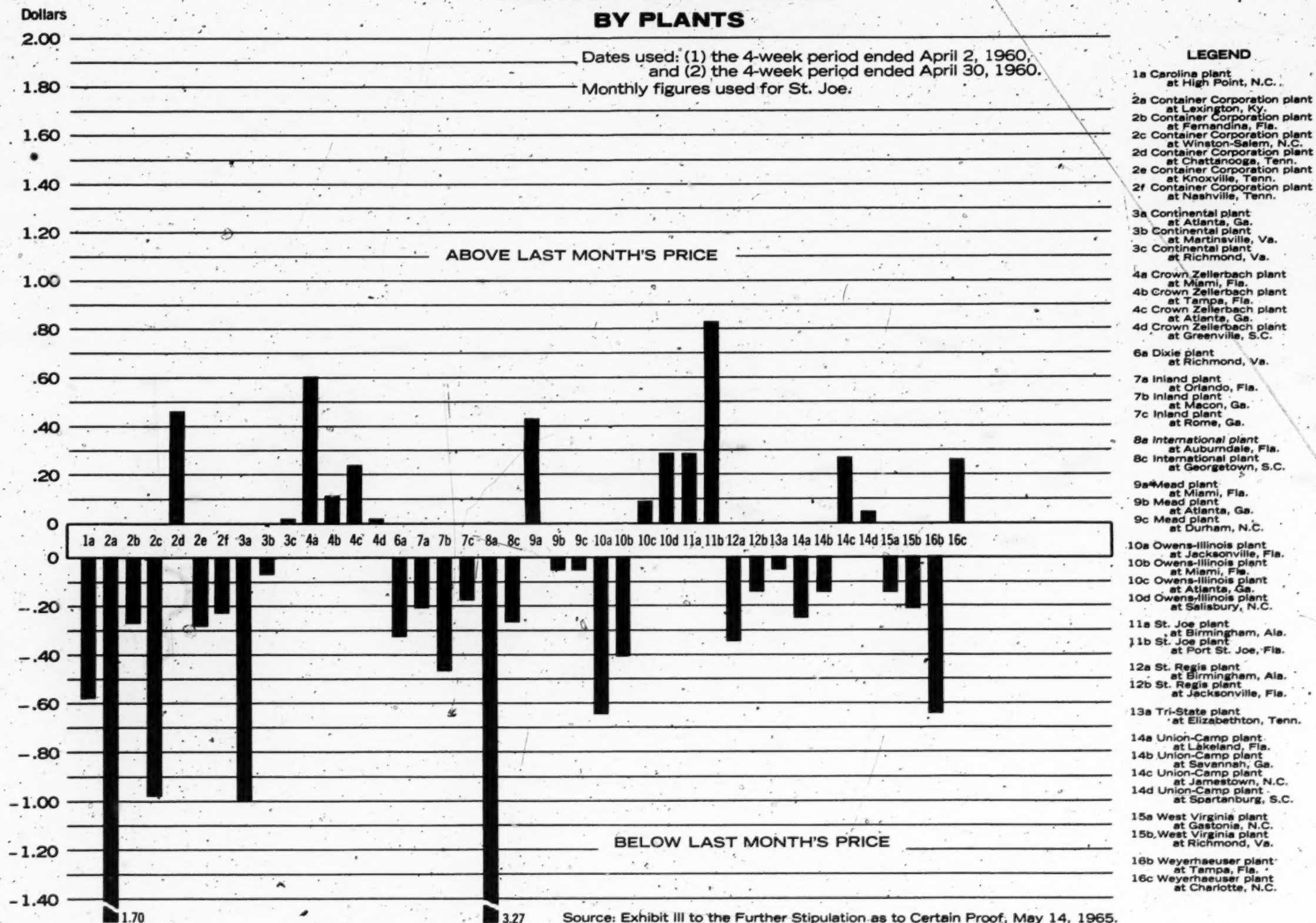
Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1959

BY PLANTS



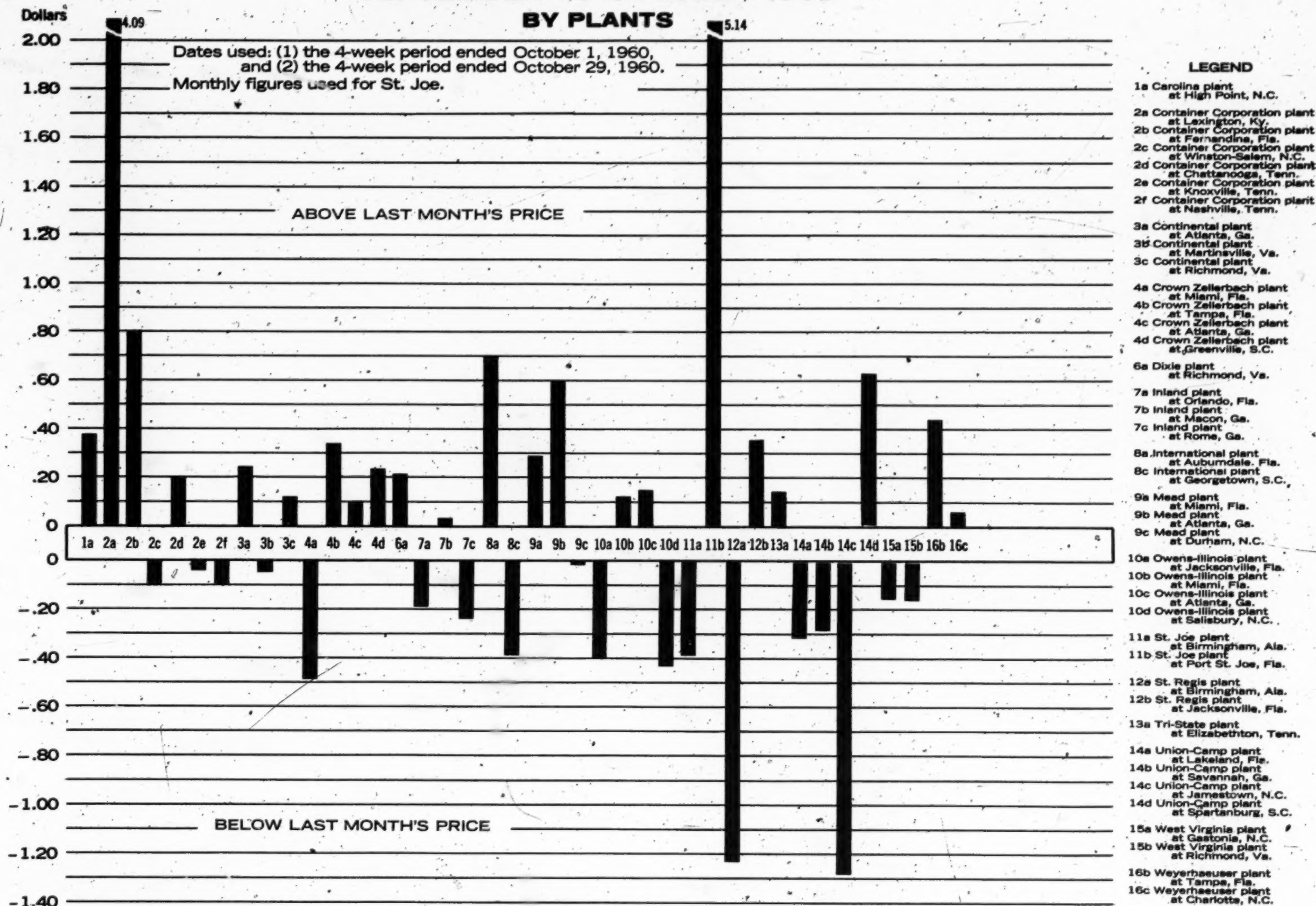
VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1960 BY PLANTS



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1960

BY PLANTS



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1961 BY PLANTS

Dollars

2.00

1.80

1.60

1.40

1.20

1.00

.80

.60

.40

.20

0

- .20

- .40

- .60

- .80

- 1.00

- 1.20

- 1.40

Dates used: (1) the 4-week period ended April 1, 1961,
and (2) the 4-week period ended April 29, 1961.
Monthly figures used for St. Joe.

ABOVE LAST MONTH'S PRICE

BELOW LAST MONTH'S PRICE

LEGEND

- 1a Carolina plant at High Point, N.C.
- 2a Container Corporation plant at Lexington, Ky.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 3a Continental plant at Atlanta, Ga.
- 3b Continental plant at Martinsville, Va.
- 3c Continental plant at Richmond, Va.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 6a Dixie plant at Richmond, Va.
- 7a Inland plant at Orlando, Fla.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8a International plant at Auburndale, Fla.
- 8c International plant at Georgetown, S.C.
- 9a Mead plant at Miami, Fla.
- 9b Mead plant at Atlanta, Ga.
- 9c Mead plant at Durham, N.C.
- 10a Owens-Illinois plant at Jacksonville, Fla.
- 10b Owens-Illinois plant at Miami, Fla.
- 10c Owens-Illinois plant at Atlanta, Ga.
- 10d Owens-Illinois plant at Salisbury, N.C.
- 11a St. Joe plant at Birmingham, Ala.
- 11b St. Joe plant at Port St. Joe, Fla.
- 12a St. Regis plant at Birmingham, Ala.
- 12b St. Regis plant at Jacksonville, Fla.
- 12c St. Regis plant at Atlanta, Ga.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14a Union-Camp plant at Lakeland, Fla.
- 14b Union-Camp plant at Savannah, Ga.
- 14c Union-Camp plant at Jamestown, N.C.
- 14d Union-Camp plant at Spartanburg, S.C.
- 15a West Virginia plant at Gastonia, N.C.
- 15b West Virginia plant at Richmond, Va.
- 16b Weyerhaeuser plant at Tampa, Fla.
- 16c Weyerhaeuser plant at Charlotte, N.C.
- 16d Weyerhaeuser plant at Lynchburg, Va.

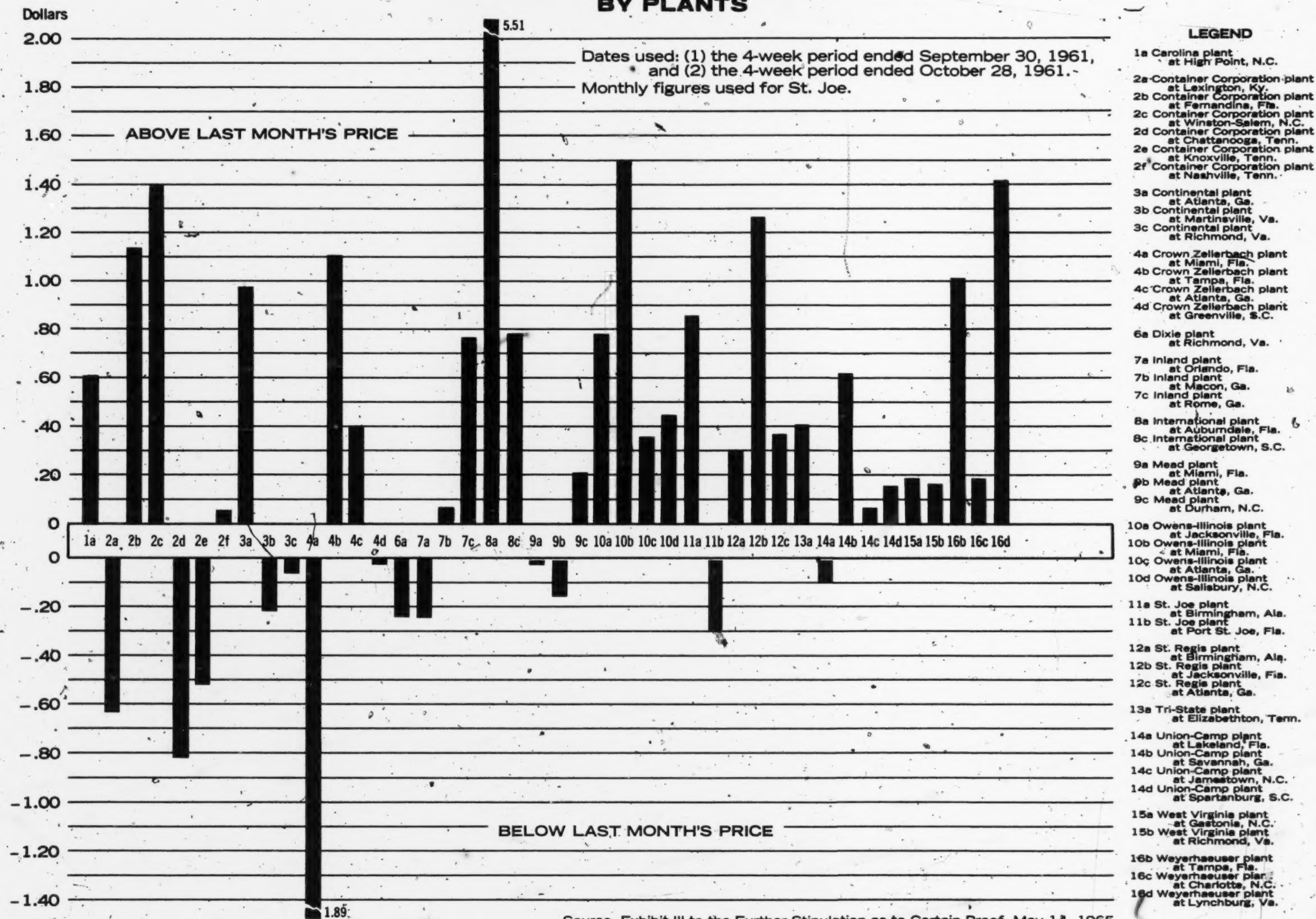
1a 2a 2b 2c 2d 2e 2f 3a 3b 3c 4a 4b 4c 4d 6a 7a 7b 7c 8a 8c 9a 9b 9c 10a 10b 10c 10d 11a 11b 12a 12b 12c 13a 14a 14b 14c 14d 15a 15b 16b 16c 16d

2.81

1.47

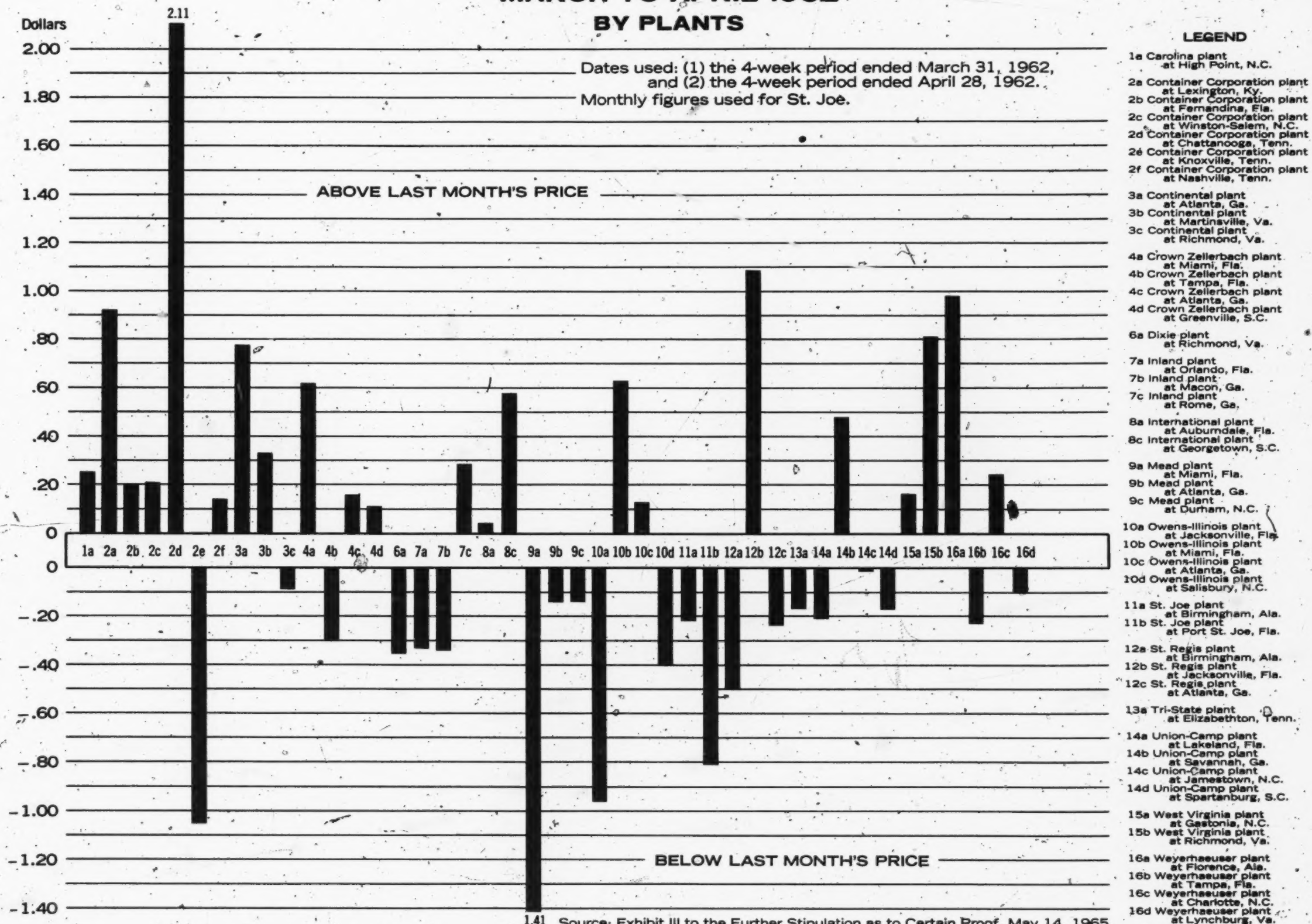
Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1961 BY PLANTS

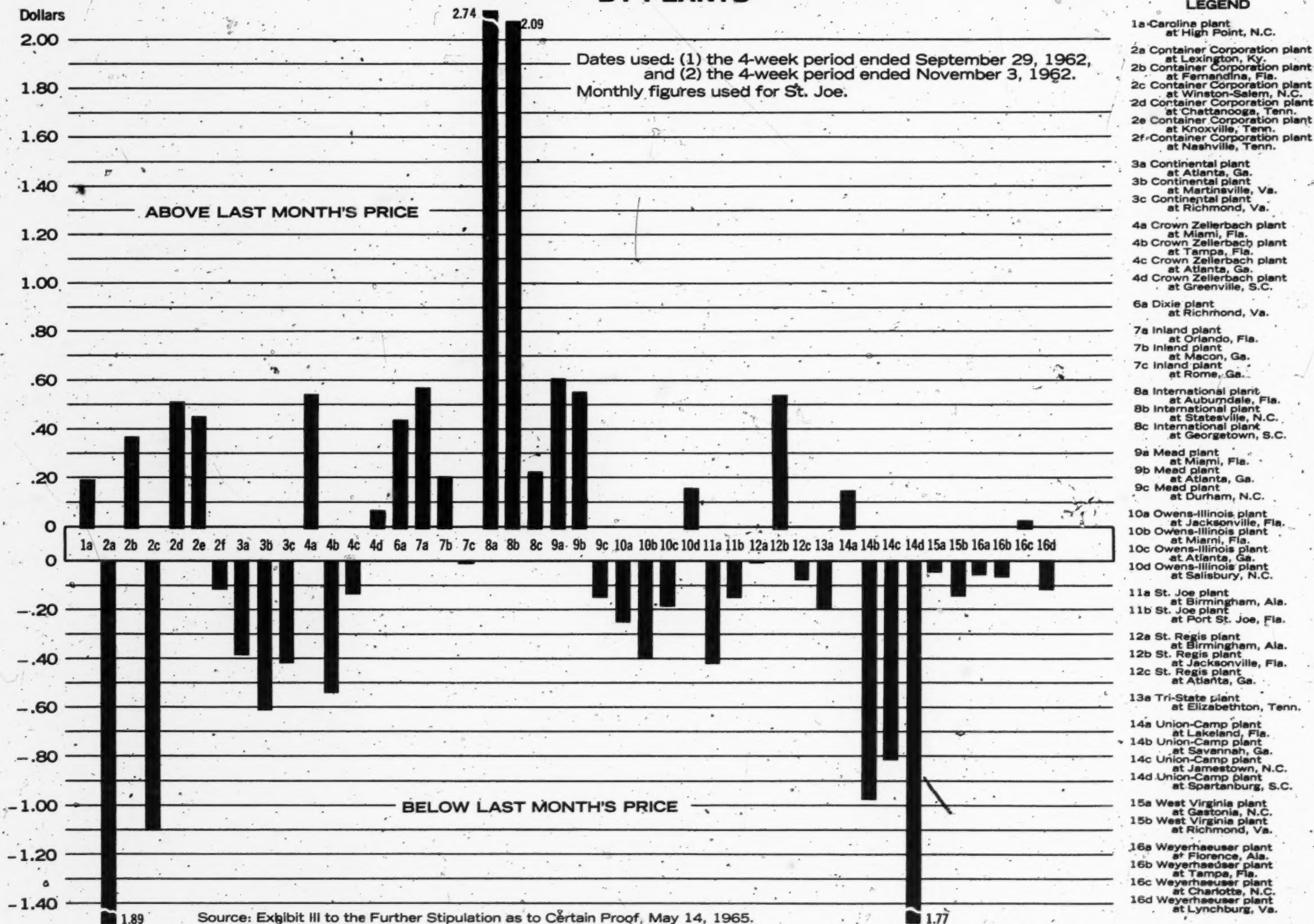


Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1962 BY PLANTS



VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1962 BY PLANTS

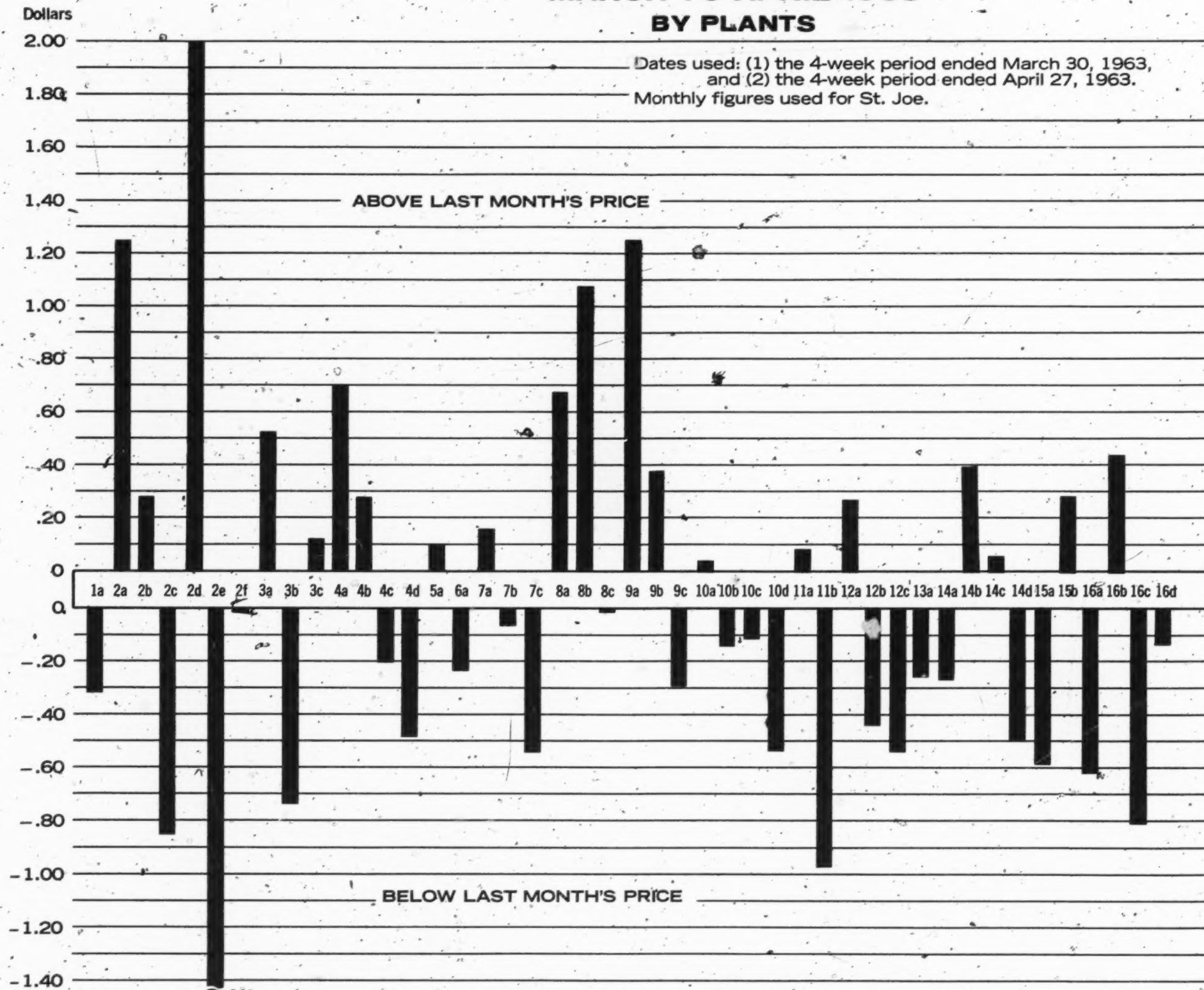


VARIANCE FROM LAST MONTH'S PRICE MARCH TO APRIL 1963 BY PLANTS

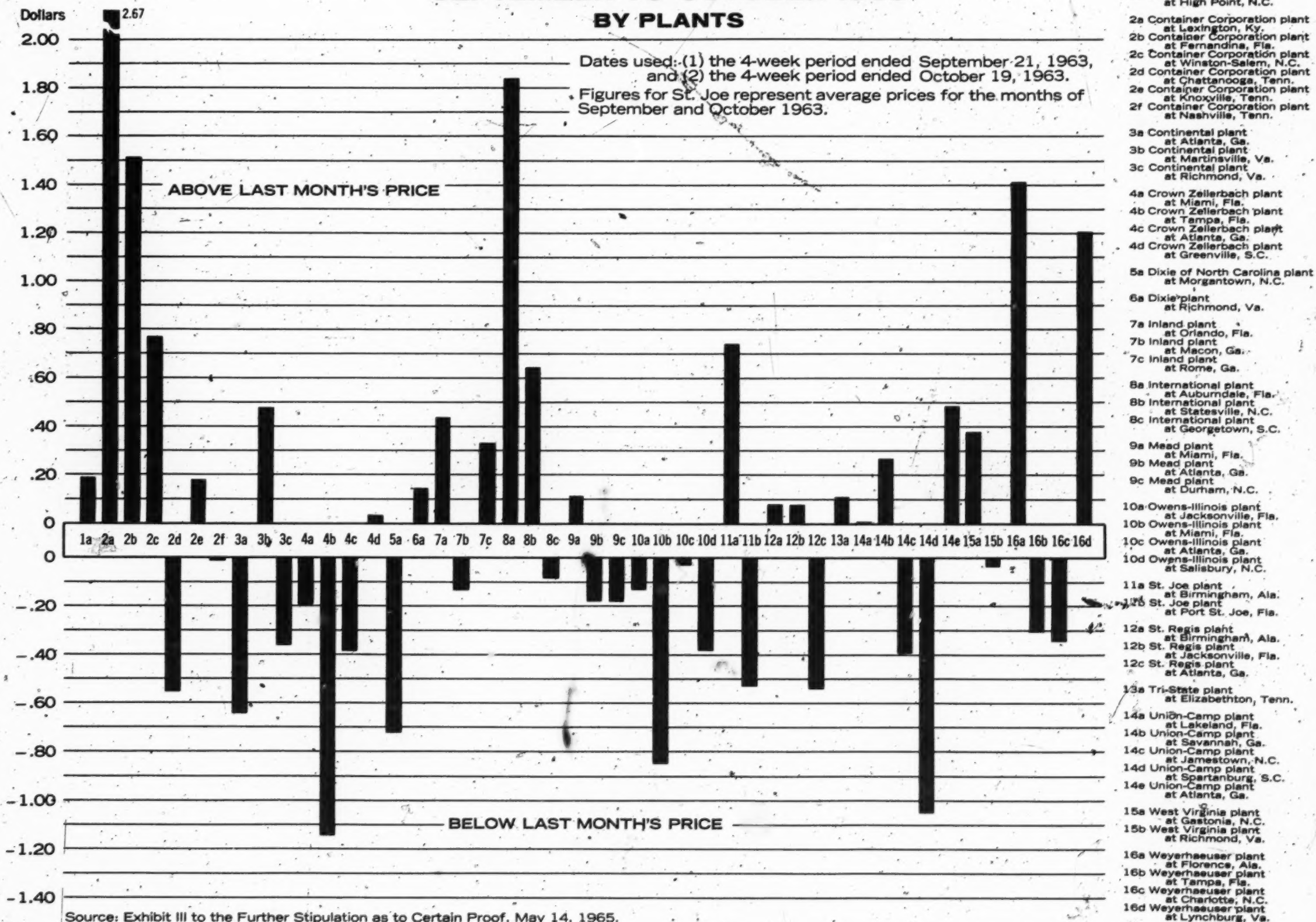
Dates used: (1) the 4-week period ended March 30, 1963,
and (2) the 4-week period ended April 27, 1963.
Monthly figures used for St. Joe.

LEGEND

- 1a Carolina plant at High Point, N.C.
- 2a Container Corporation plant at Lexington, Ky.
- 2b Container Corporation plant at Fernandina, Fla.
- 2c Container Corporation plant at Winston-Salem, N.C.
- 2d Container Corporation plant at Chattanooga, Tenn.
- 2e Container Corporation plant at Knoxville, Tenn.
- 2f Container Corporation plant at Nashville, Tenn.
- 3a Continental plant at Atlanta, Ga.
- 3b Continental plant at Martinsville, Va.
- 3c Continental plant at Richmond, Va.
- 4a Crown Zellerbach plant at Miami, Fla.
- 4b Crown Zellerbach plant at Tampa, Fla.
- 4c Crown Zellerbach plant at Atlanta, Ga.
- 4d Crown Zellerbach plant at Greenville, S.C.
- 5a Dixie of North Carolina plant at Morgantown, N.C.
- 6a Dixie plant at Richmond, Va.
- 7a Inland plant at Orlando, Fla.
- 7b Inland plant at Macon, Ga.
- 7c Inland plant at Rome, Ga.
- 8a International plant at Auburndale, Fla.
- 8b International plant at Statesville, N.C.
- 8c International plant at Georgetown, S.C.
- 9a Mead plant at Miami, Fla.
- 9b Mead plant at Atlanta, Ga.
- 9c Mead plant at Durham, N.C.
- 10a Owens-Illinois plant at Jacksonville, Fla.
- 10b Owens-Illinois plant at Miami, Fla.
- 10c Owens-Illinois plant at Atlanta, Ga.
- 10d Owens-Illinois plant at Salisbury, N.C.
- 11a St. Joe plant at Birmingham, Ala.
- 11b St. Joe plant at Port St. Joe, Fla.
- 12a St. Regis plant at Birmingham, Ala.
- 12b St. Regis plant at Jacksonville, Fla.
- 12c St. Regis plant at Atlanta, Ga.
- 13a Tri-State plant at Elizabethton, Tenn.
- 14a Union-Camp plant at Lakeland, Fla.
- 14b Union-Camp plant at Savannah, Ga.
- 14c Union-Camp plant at Jamestown, N.C.
- 14d Union-Camp plant at Spartanburg, S.C.
- 15a West Virginia plant at Gastonia, N.C.
- 15b West Virginia plant at Richmond, Va.
- 16a Weyerhaeuser plant at Florence, Ala.
- 16b Weyerhaeuser plant at Tampa, Fla.
- 16c Weyerhaeuser plant at Charlotte, N.C.
- 16d Weyerhaeuser plant at Lynchburg, Va.



VARIANCE FROM LAST MONTH'S PRICE SEPTEMBER TO OCTOBER 1963 BY PLANTS



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

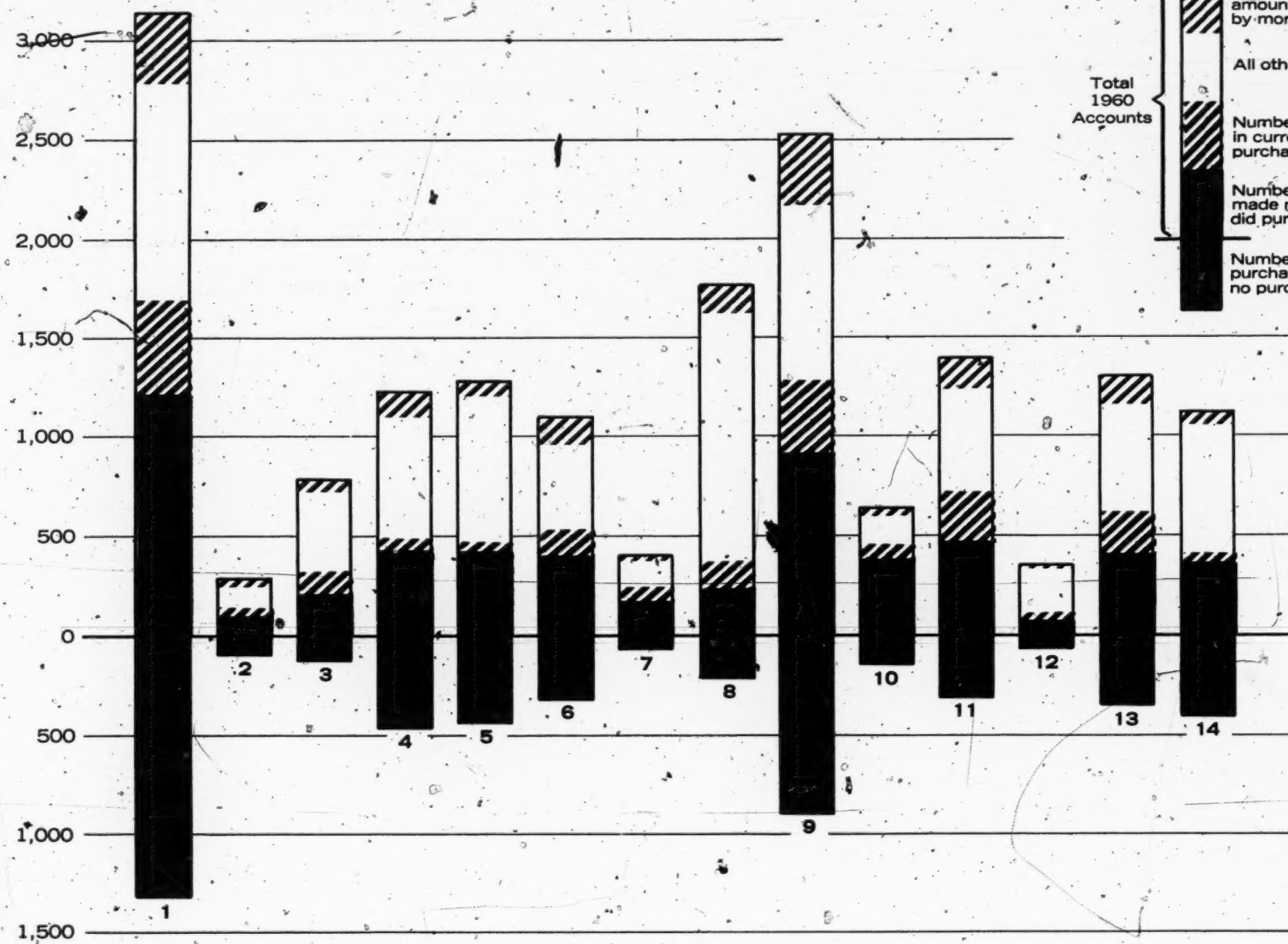
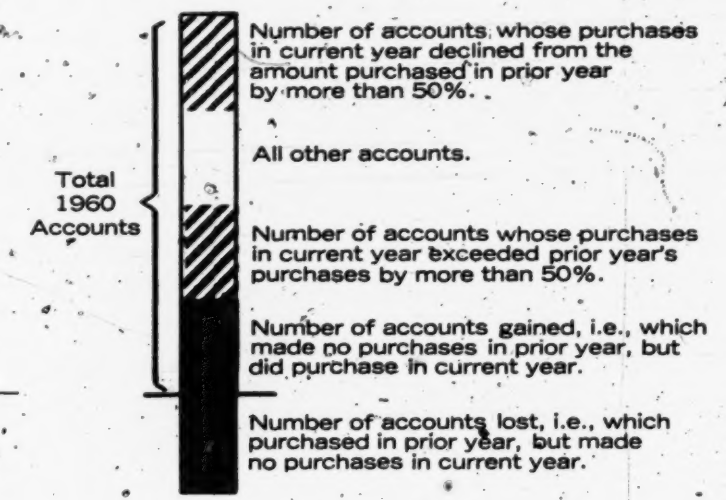
ACCOUNTS GAINED AND LOST BY COMPANIES

The charts in this section show the number of accounts lost and gained, or largely lost or gained, in the Southeastern United States by those defendants for which such information is available. The years covered are 1960 — 1962, and it has been stipulated that the figures are representative for each defendant of the entire period covered by the complaint. See Paragraph 5 of Exhibit I to the Further Stipulation as to Certain Proof, May 14, 1965.

ACCOUNTS GAINED AND LOST BY COMPANIES 1960

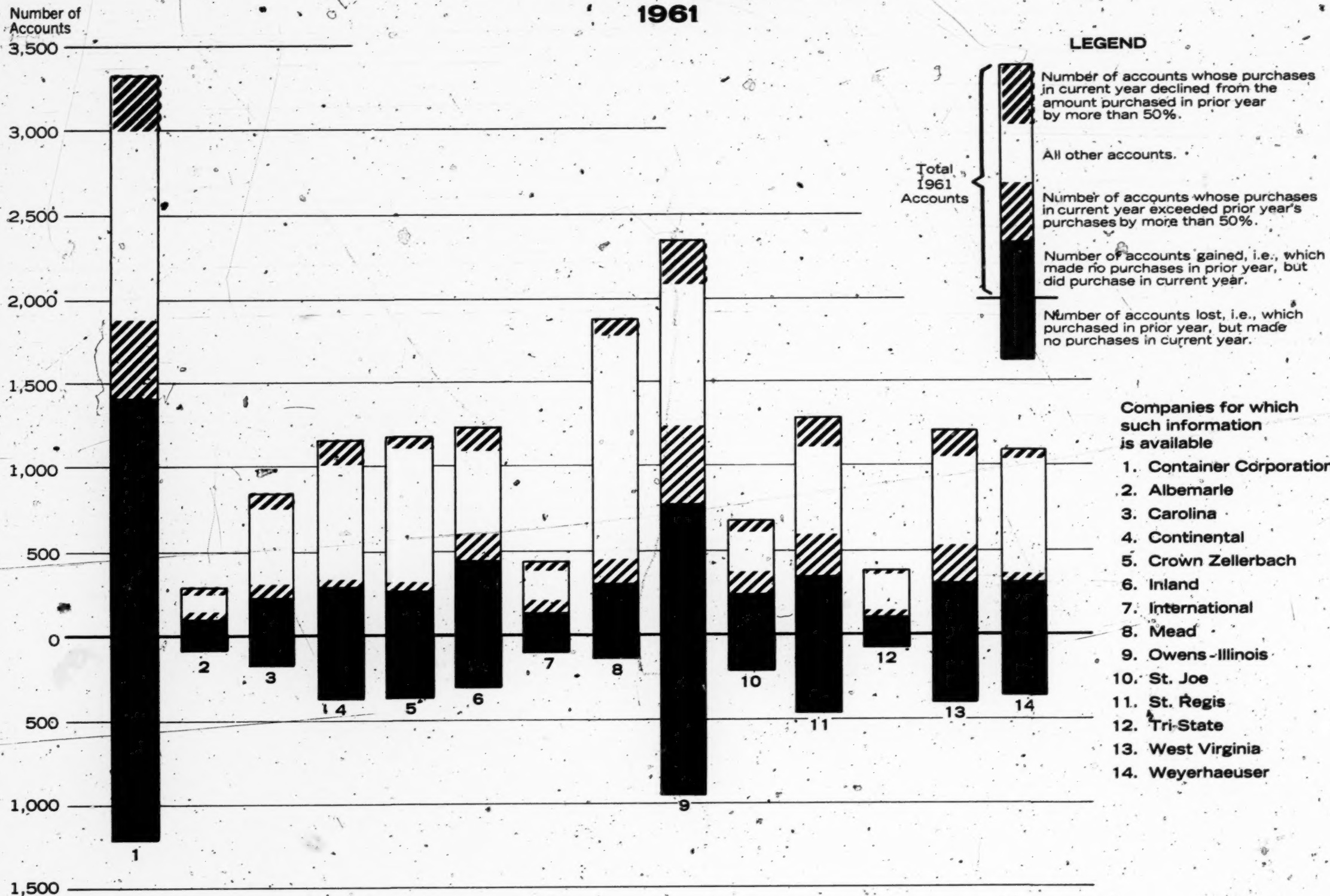
Number of
Accounts
3,500

LEGEND



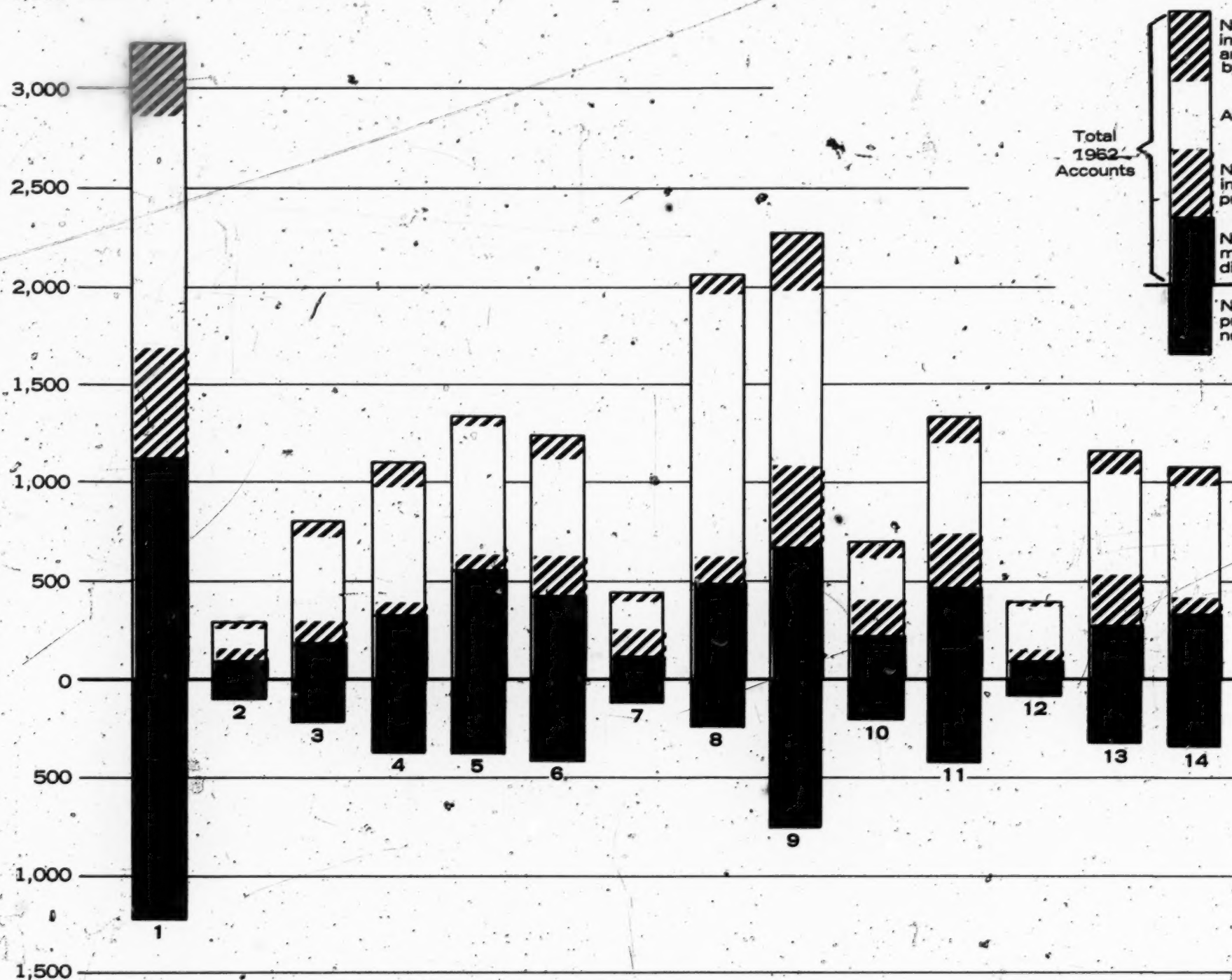
- Companies for which such information is available
1. Container Corporation
 2. Albemarle
 3. Carolina
 4. Continental
 5. Crown Zellerbach
 6. Inland
 7. International
 8. Mead
 9. Owens-Illinois
 10. St. Joe
 11. St. Regis
 12. Tri-State
 13. West Virginia
 14. Weyerhaeuser

ACCOUNTS GAINED AND LOST BY COMPANIES 1961

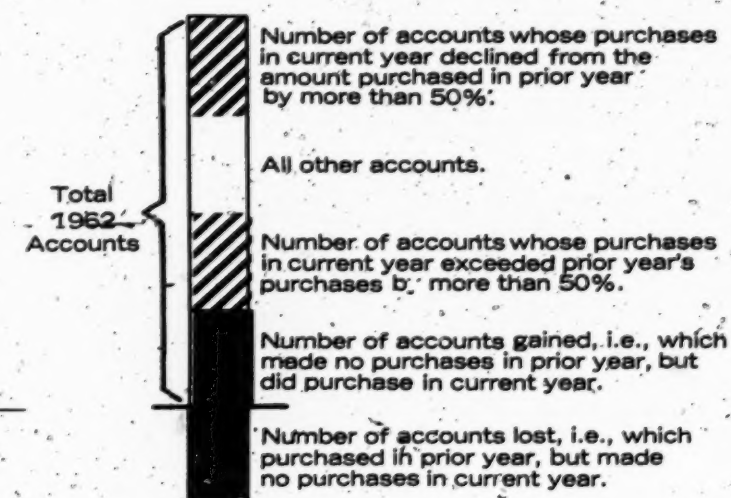


ACCOUNTS GAINED AND LOST BY COMPANIES 1962

Number of
Accounts
3,500



LEGEND



Companies for which such information is available

1. Container Corporation
2. Albemarle
3. Carolina
4. Continental
5. Crown Zellerbach
6. Inland
7. International
8. Mead
9. Owens-Illinois
10. St. Joe
11. St. Regis
12. Tri-State
13. West Virginia
14. Weyerhaeuser

PRICE TRENDS BY PLANTS 1955-1963

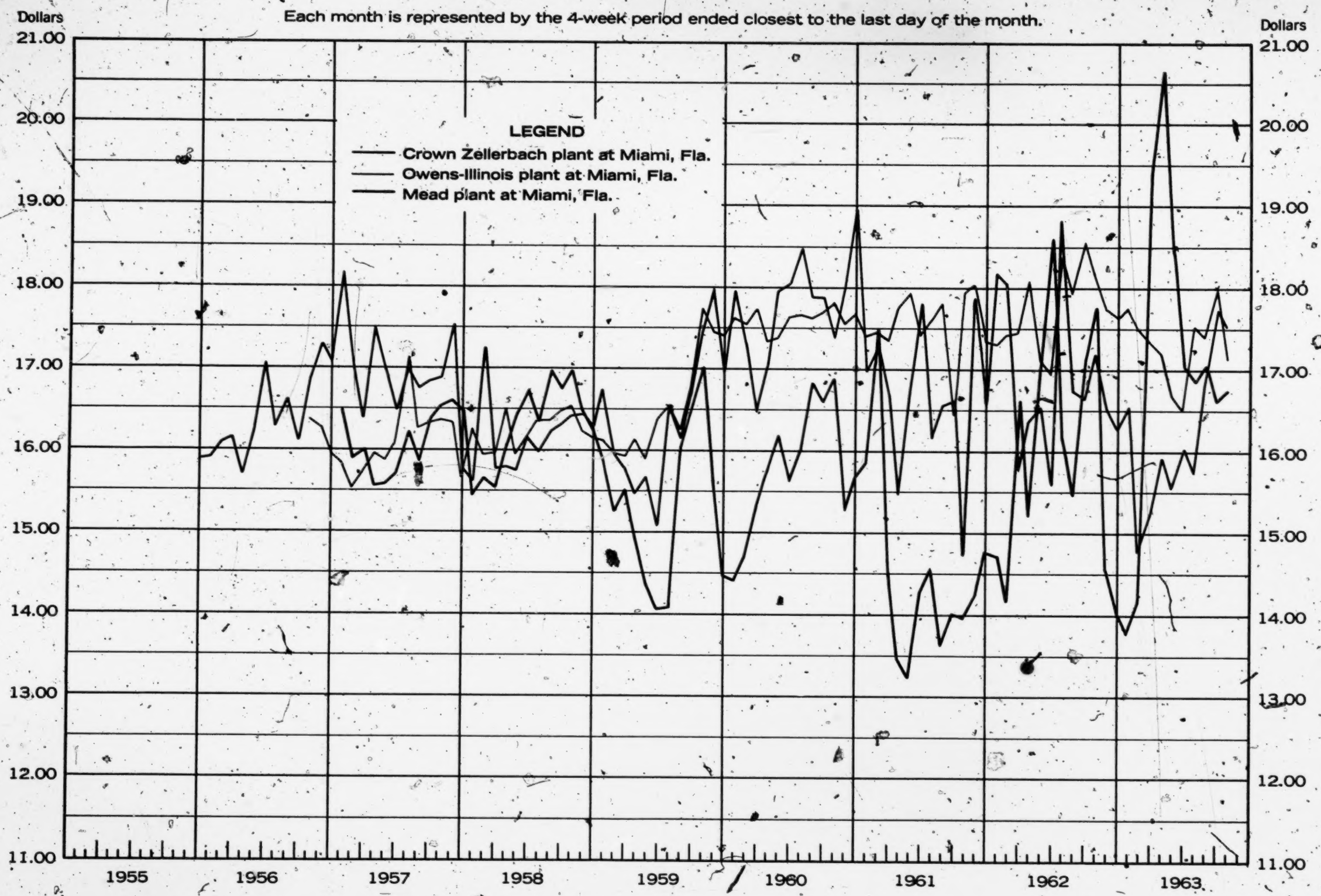
The charts in this section show the trend over the period 1955 to October 1963 in box prices as shown in Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965. See also Paragraph 59 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.

For each company, except for St. Joe, included in these charts the figures represent 4-week averages for each plant. Each month is represented by the 4-week period ended closest to the last day of the month. For St. Joe, its full calendar month figures are used throughout.

Mechanical limitations require that not more than approximately five plants be shown on a single chart. For this reason it has been necessary to group the plants in some manner. The basis for such grouping is roughly geographic. The grouping on the charts is not intended to define competitive areas.

PRICE TRENDS BY PLANTS **1955-1963**

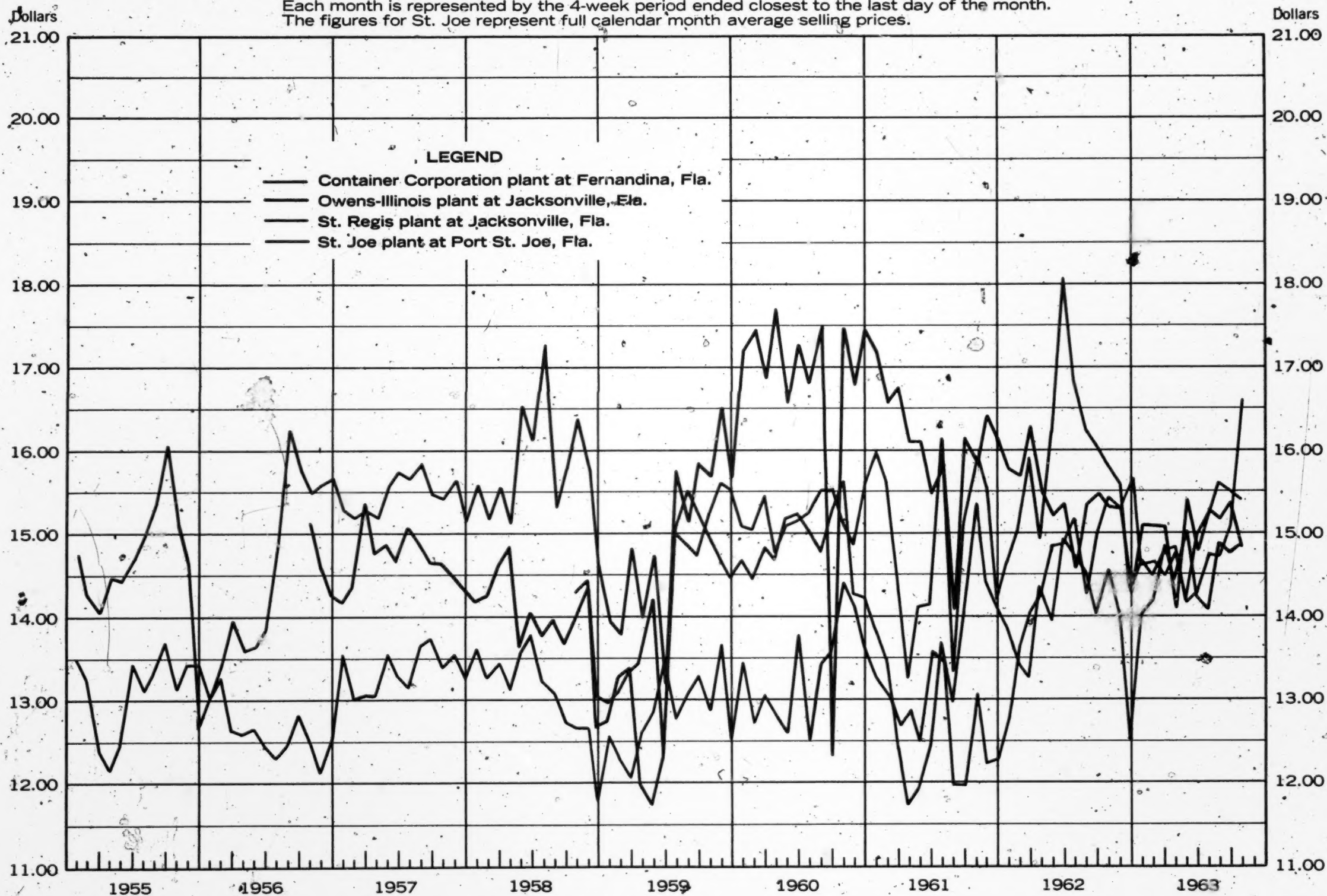
Each month is represented by the 4-week period ended closest to the last day of the month.



PRICE TRENDS BY PLANTS 1955-1963

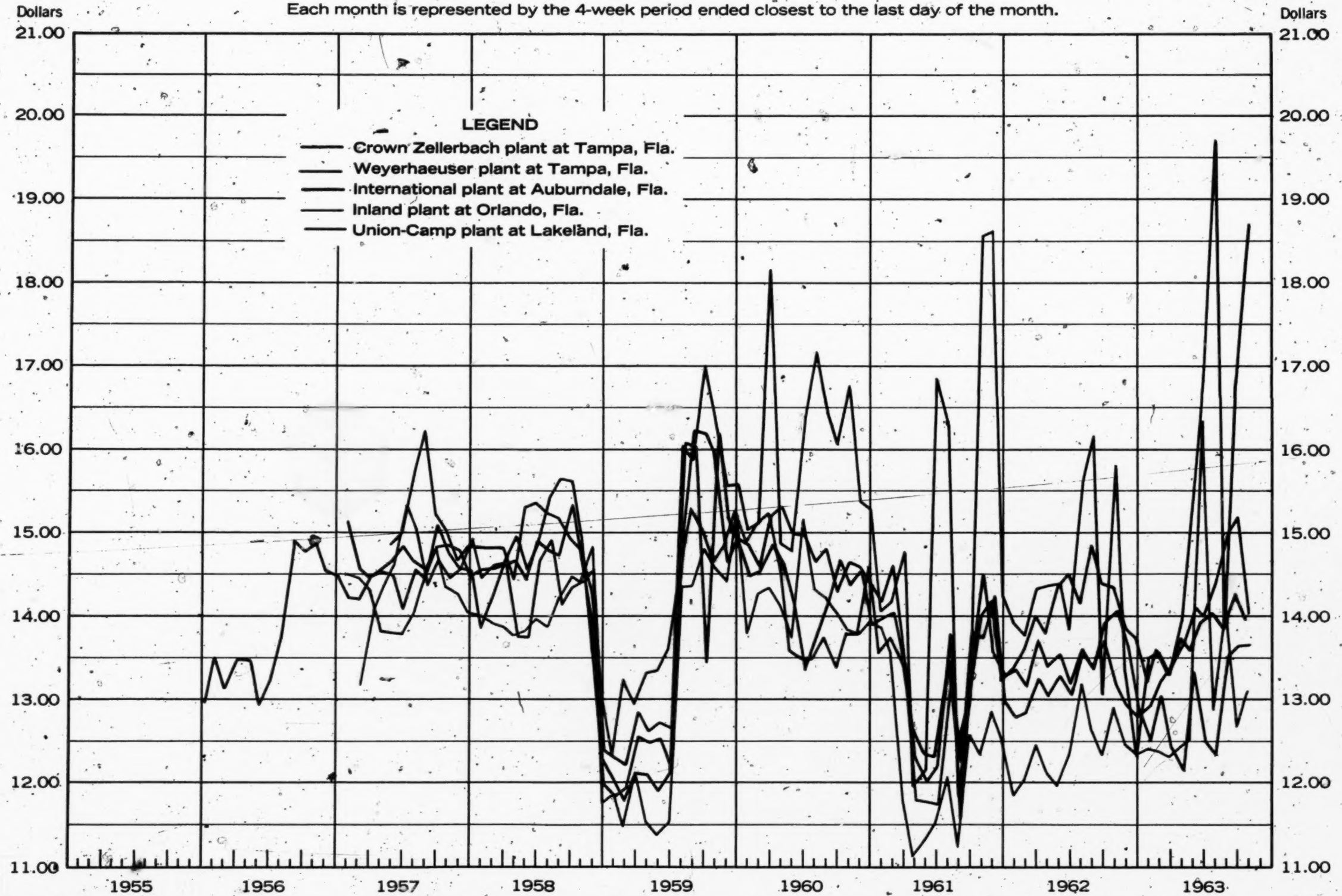
27

Each month is represented by the 4-week period ended closest to the last day of the month.
The figures for St. Joe represent full calendar month average selling prices.



PRICE TRENDS BY PLANTS 1955-1963

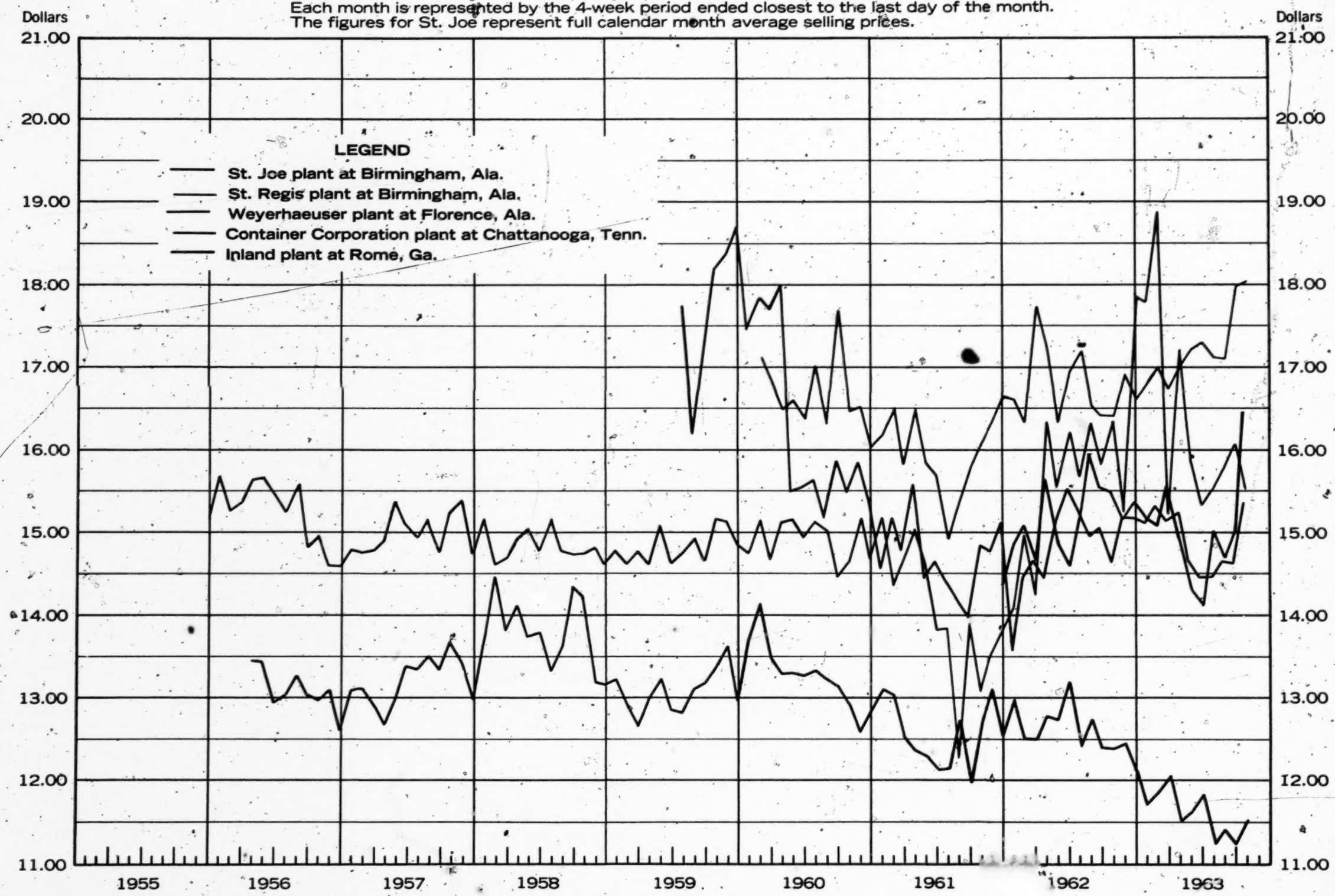
Each month is represented by the 4-week period ended closest to the last day of the month.



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

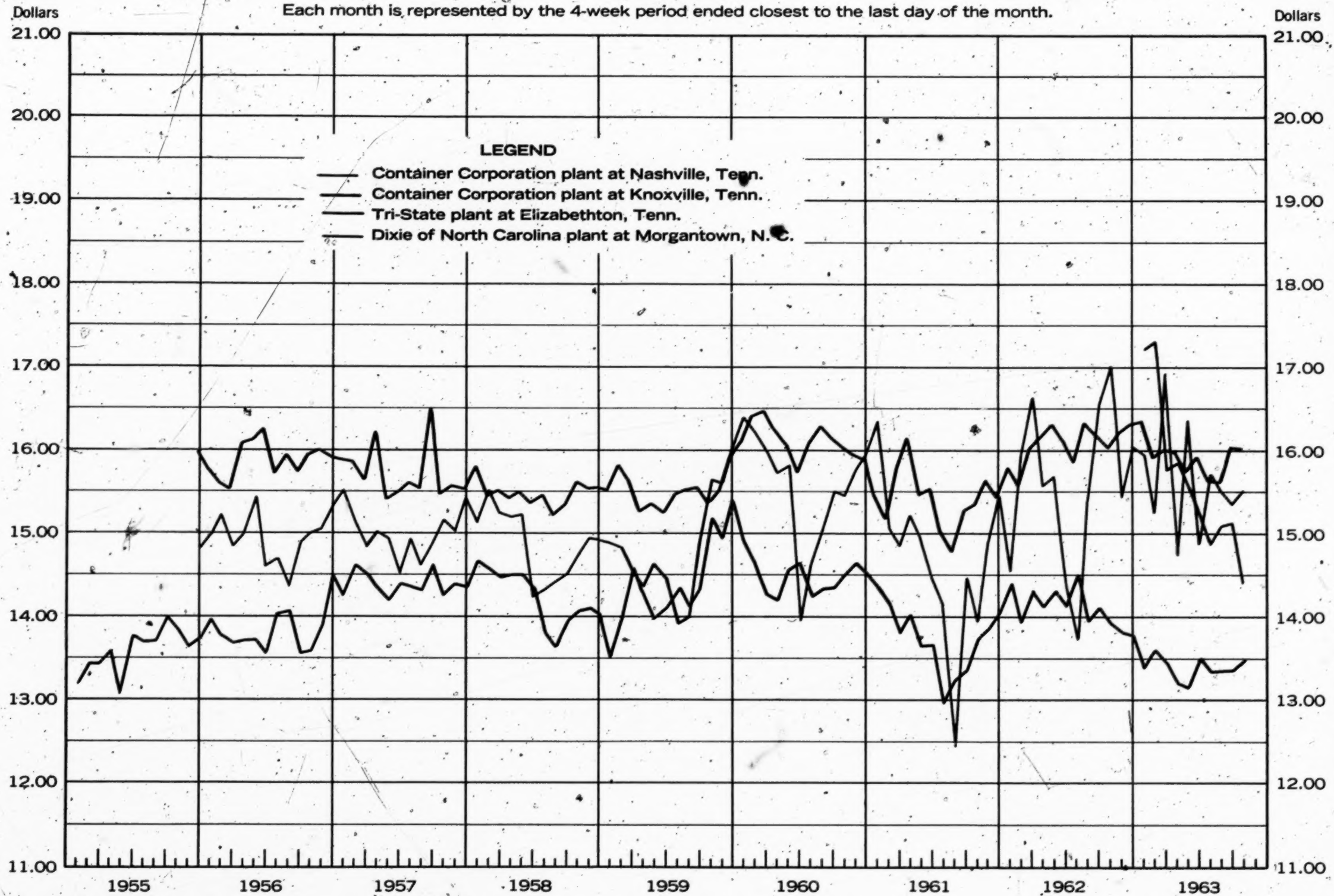
PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.
The figures for St. Joe represent full calendar month average selling prices.



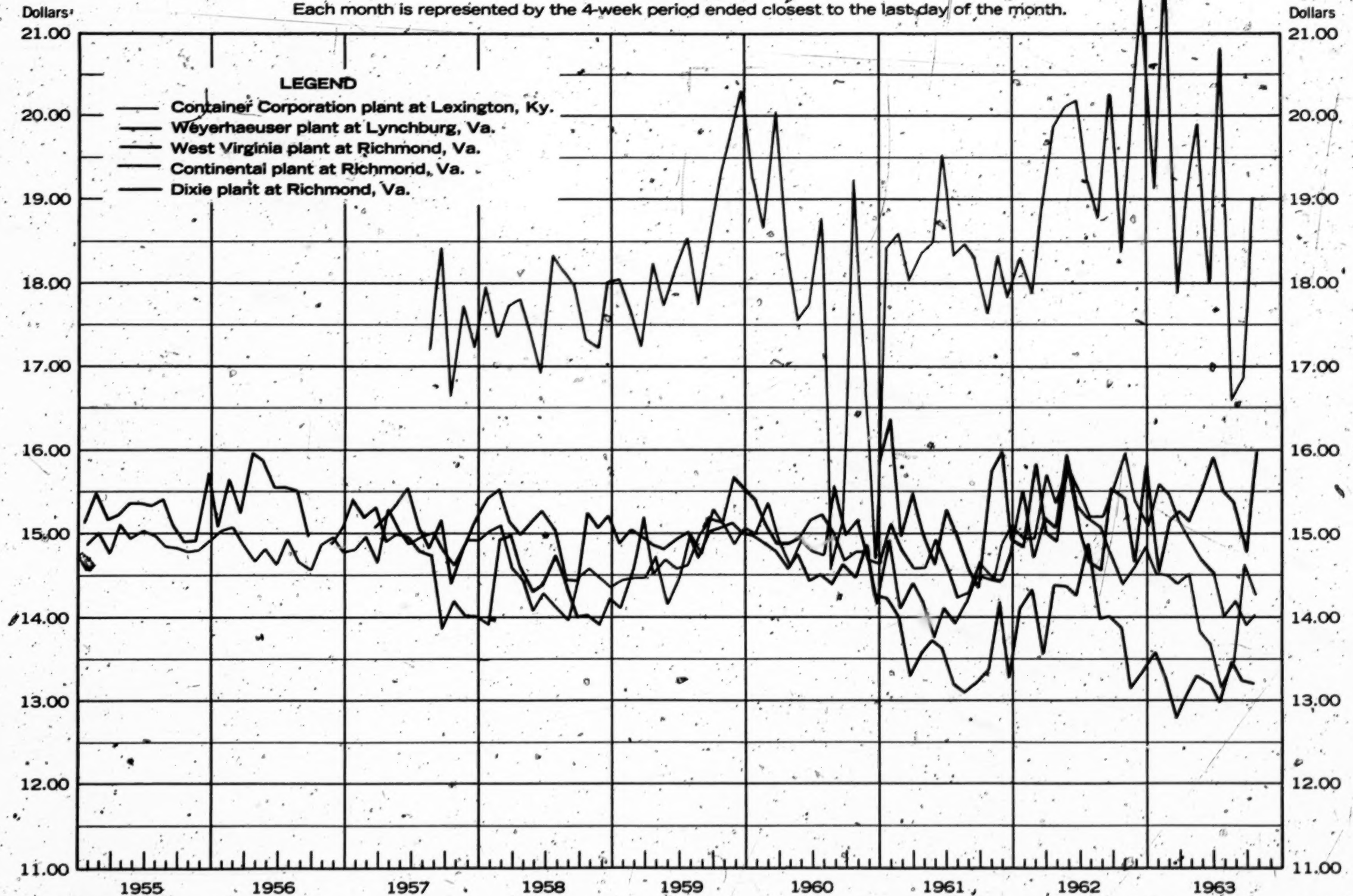
PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.



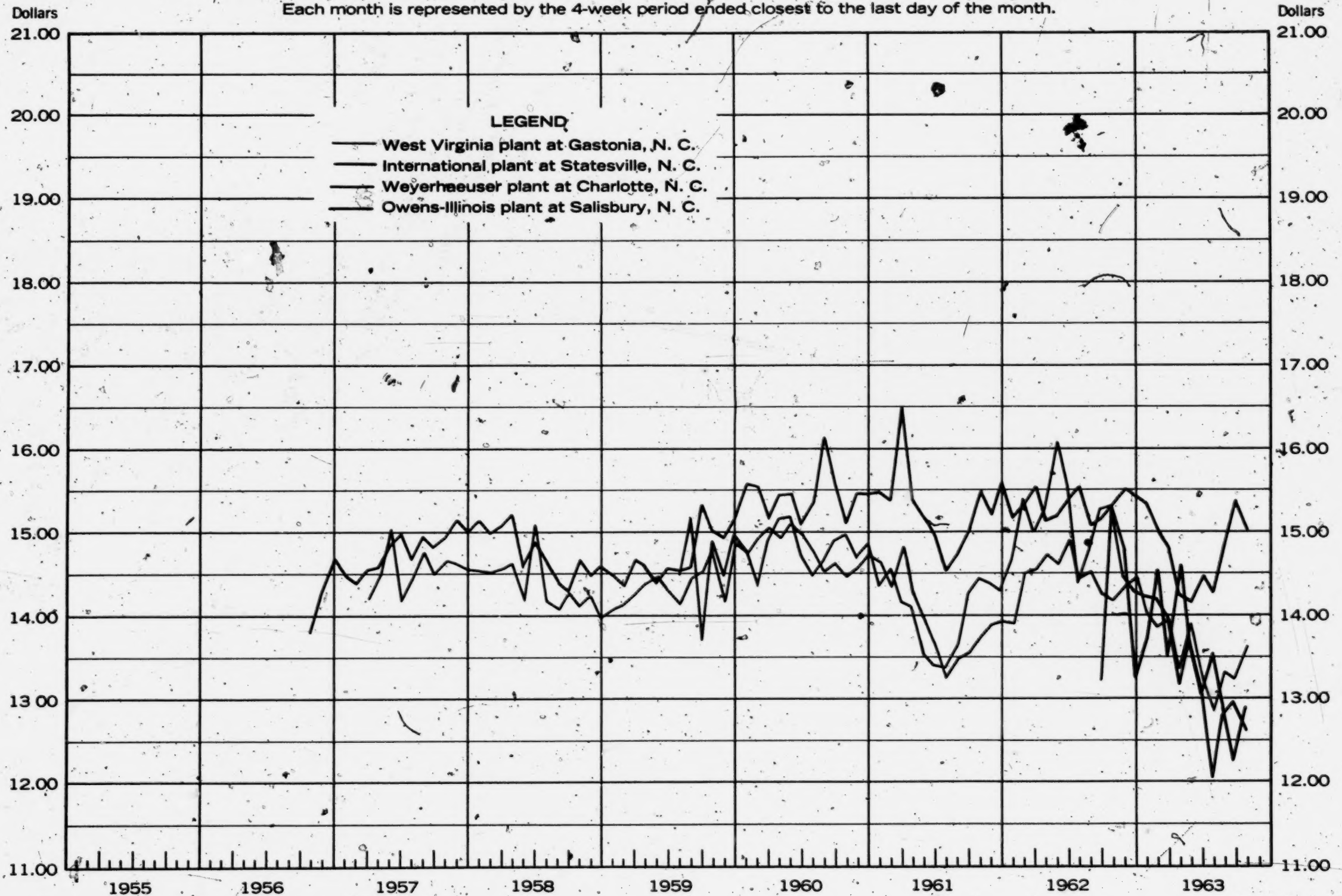
PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.



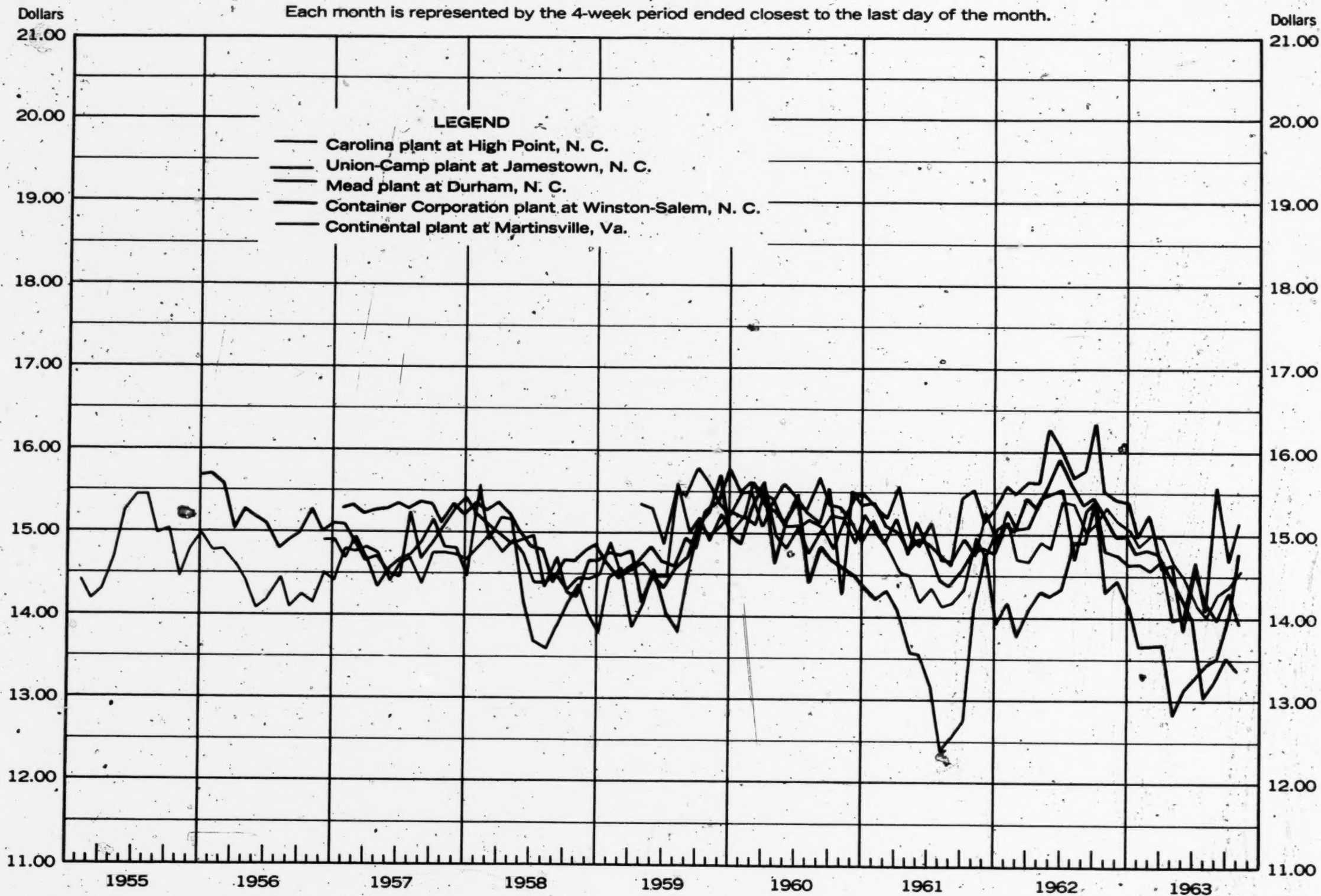
PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.



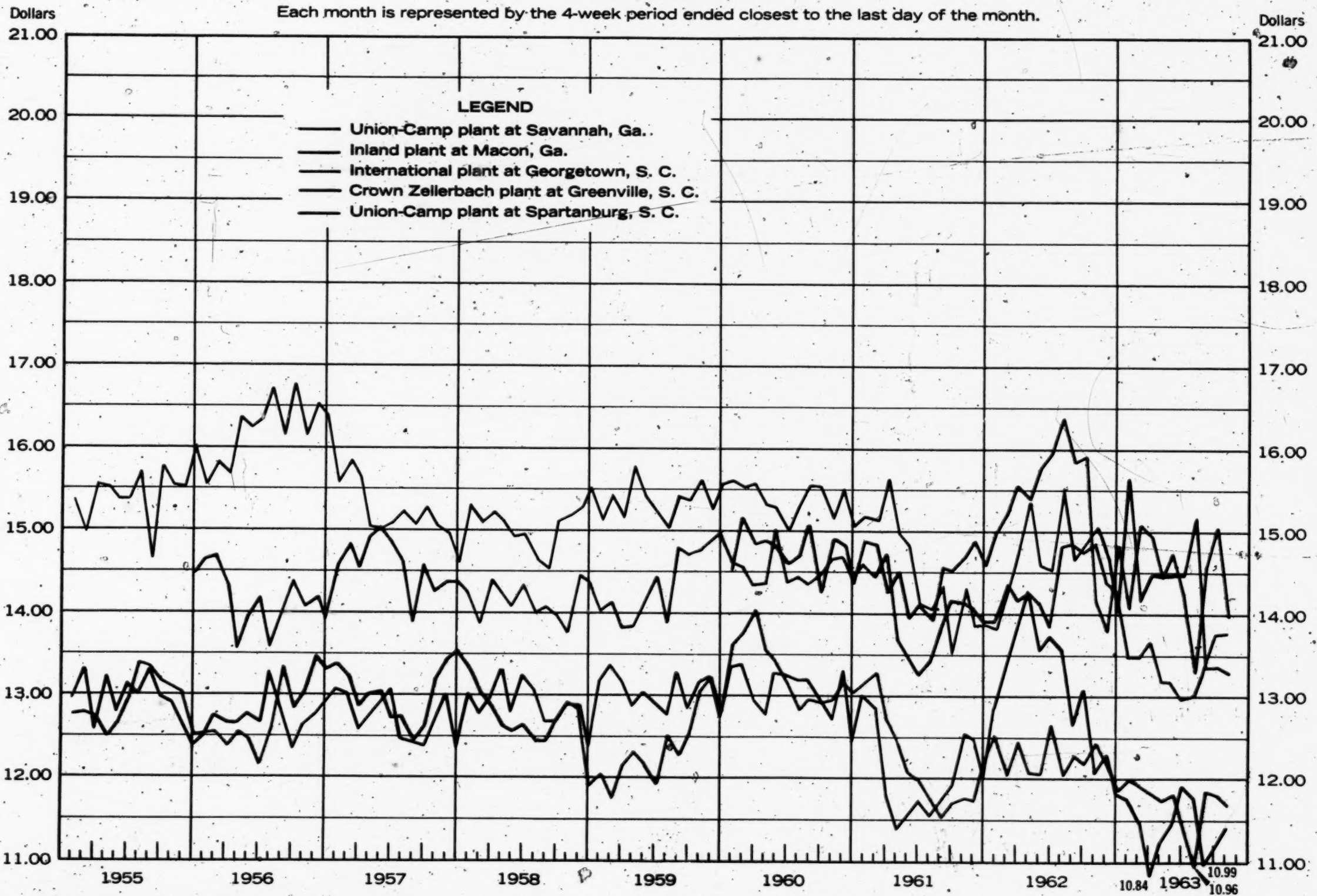
PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

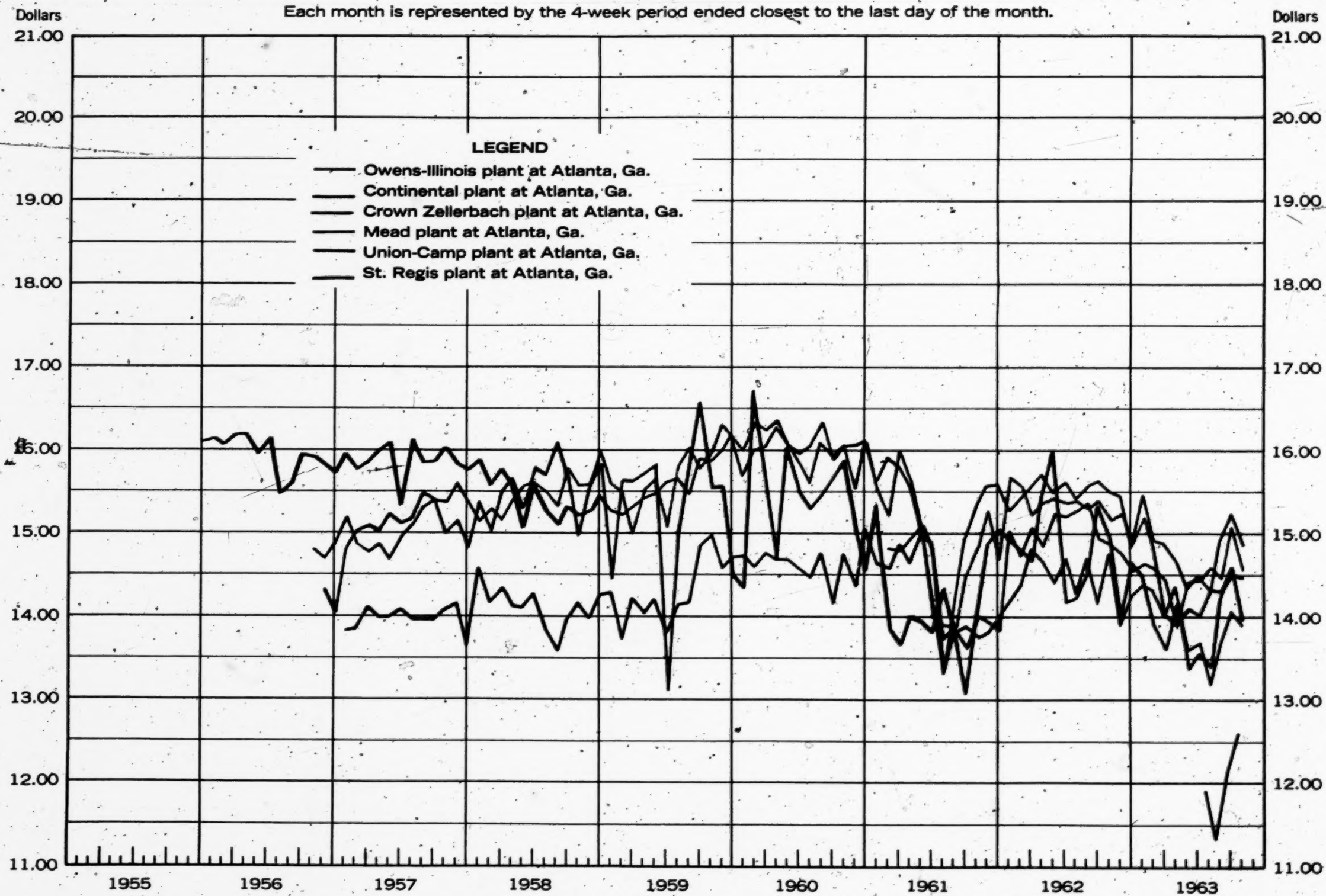
PRICE TRENDS BY PLANTS 1955-1963



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1955-1963

Each month is represented by the 4-week period ended closest to the last day of the month.



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961

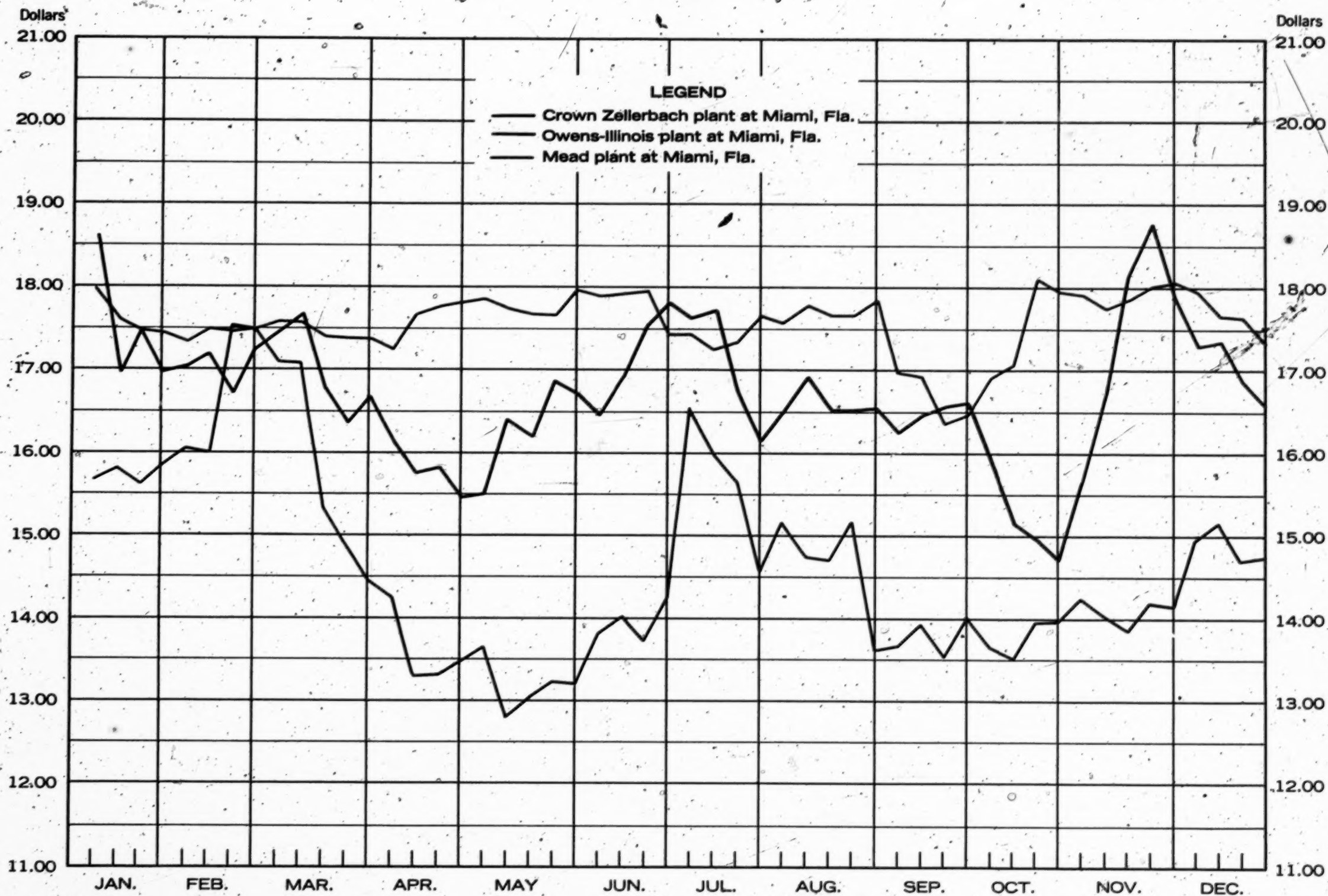
The charts in this section show the trend during the year 1961 in box prices as shown in Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965. See also Paragraph 59 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.

For each company included in these charts the figures represent for each Saturday of the year the price during the 4-week period ended that Saturday.

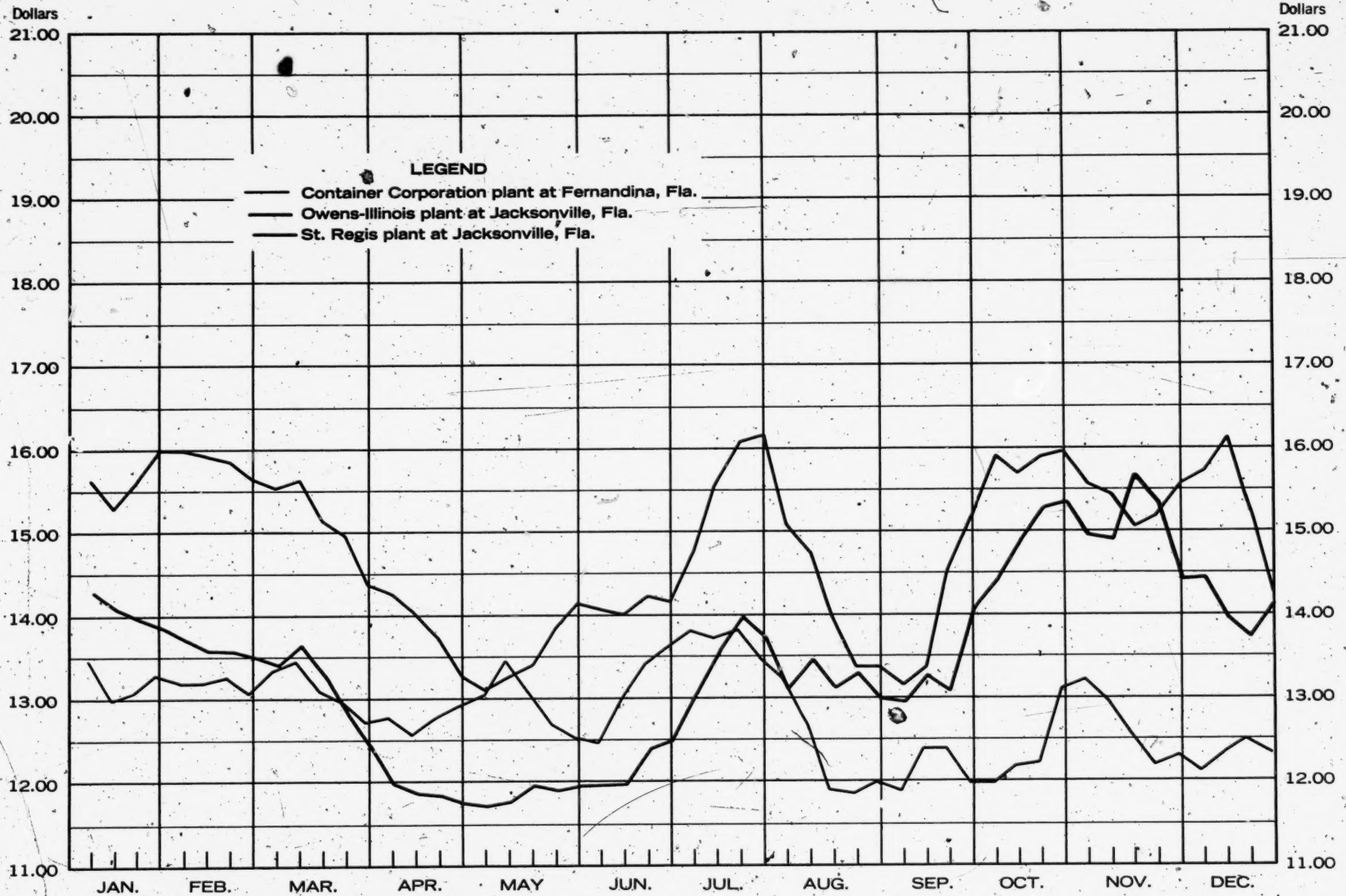
St. Joe, which was included in the Price Trends 1955-1963 charts, did not have figures available for the Price Trends 1961 charts.

Mechanical limitations require that not more than approximately five plants be shown on a single chart. For this reason it has been necessary to group the plants in some manner. The basis for such grouping is roughly geographic. The grouping on the charts is not intended to define competitive areas.

PRICE TRENDS BY PLANTS 1961



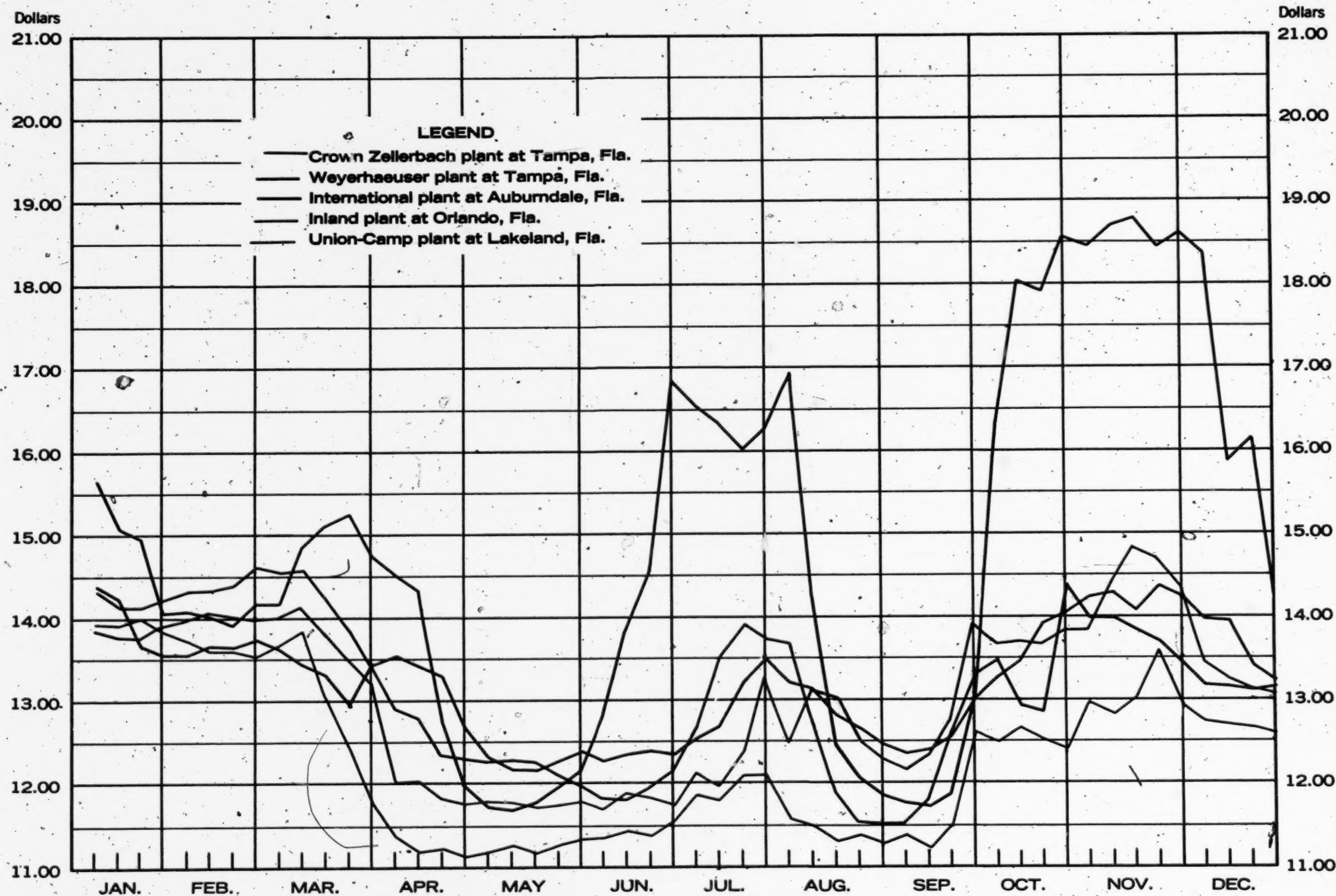
PRICE TRENDS BY PLANTS 1961



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

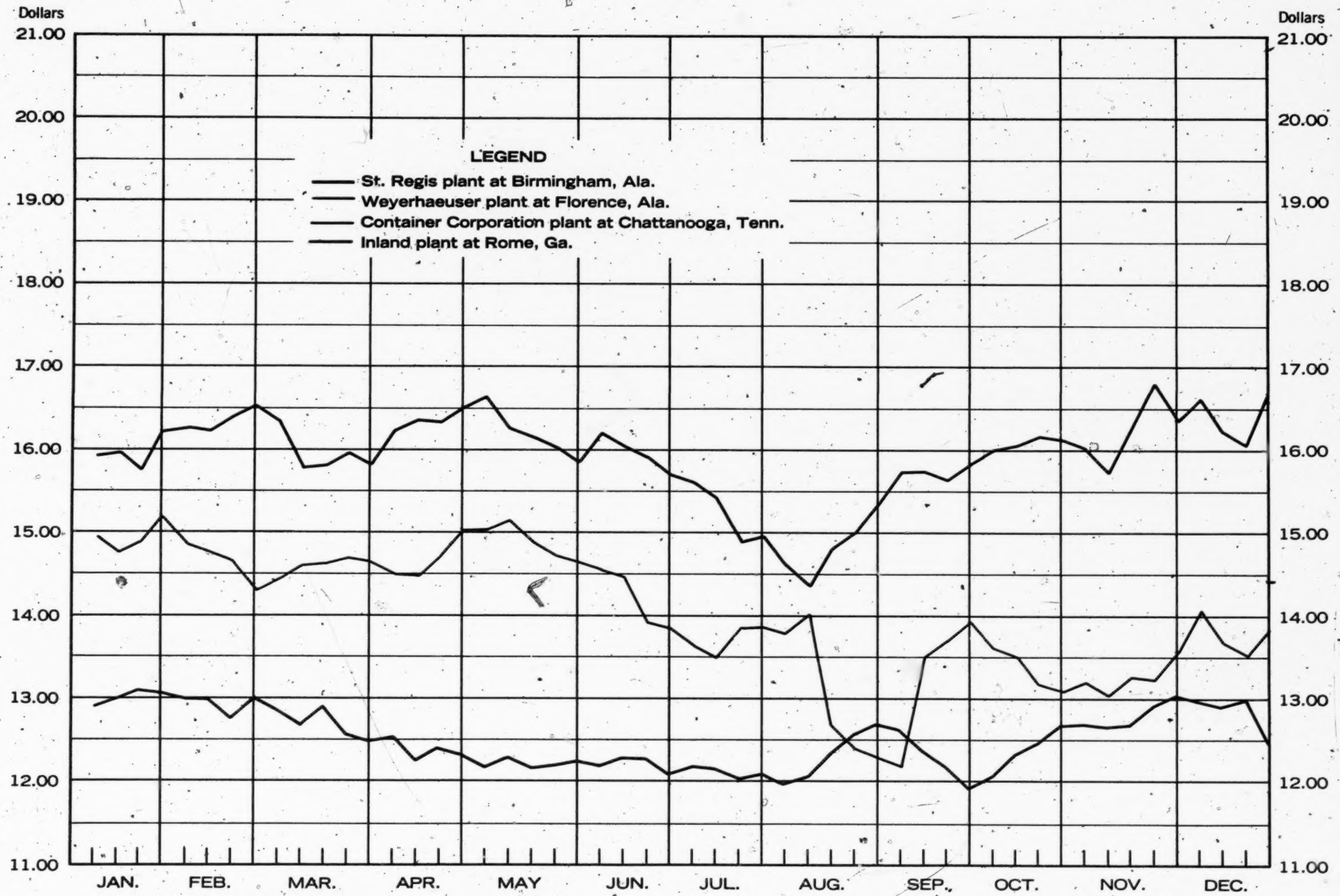
PRICE TRENDS BY PLANTS 1961

39

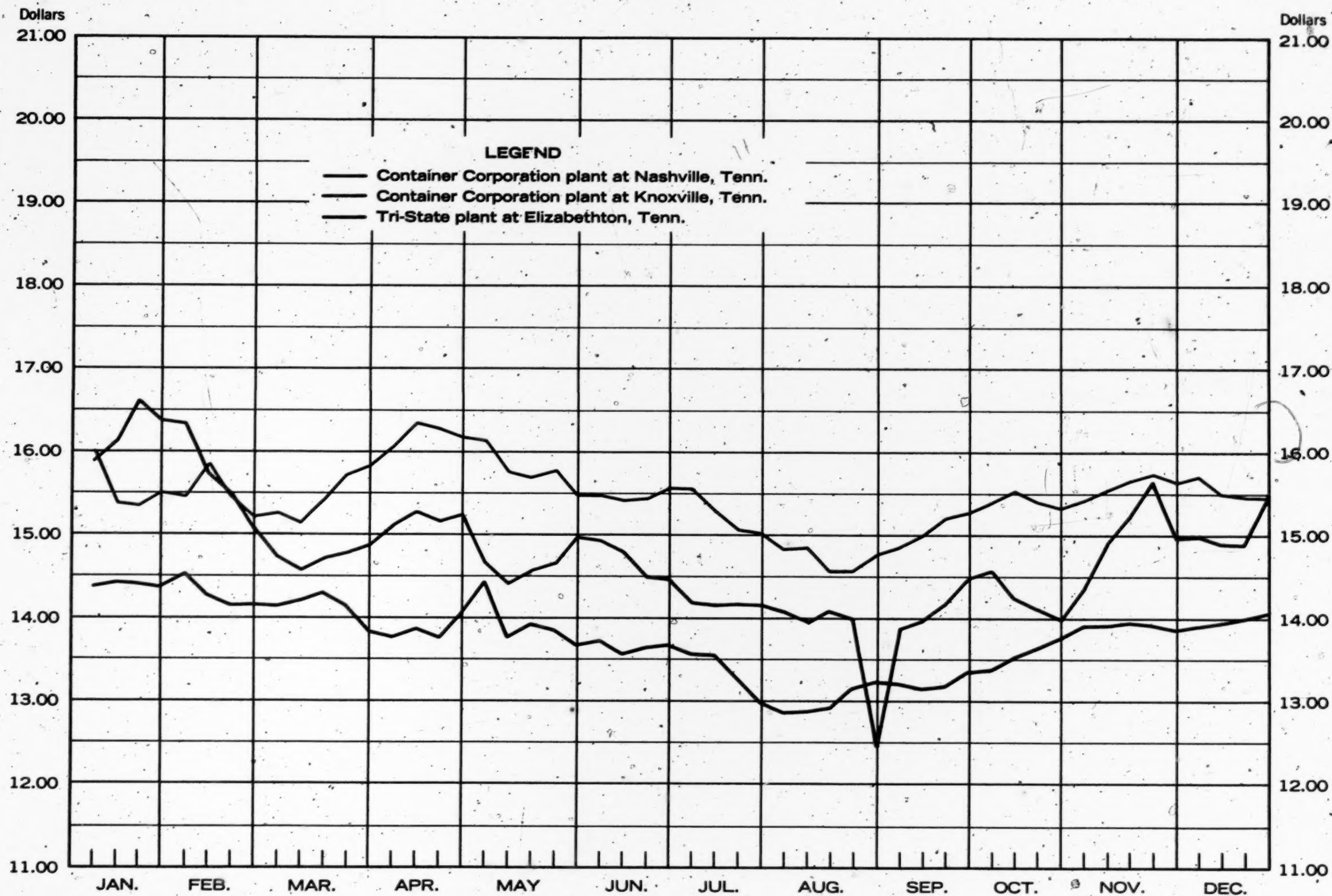


Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961

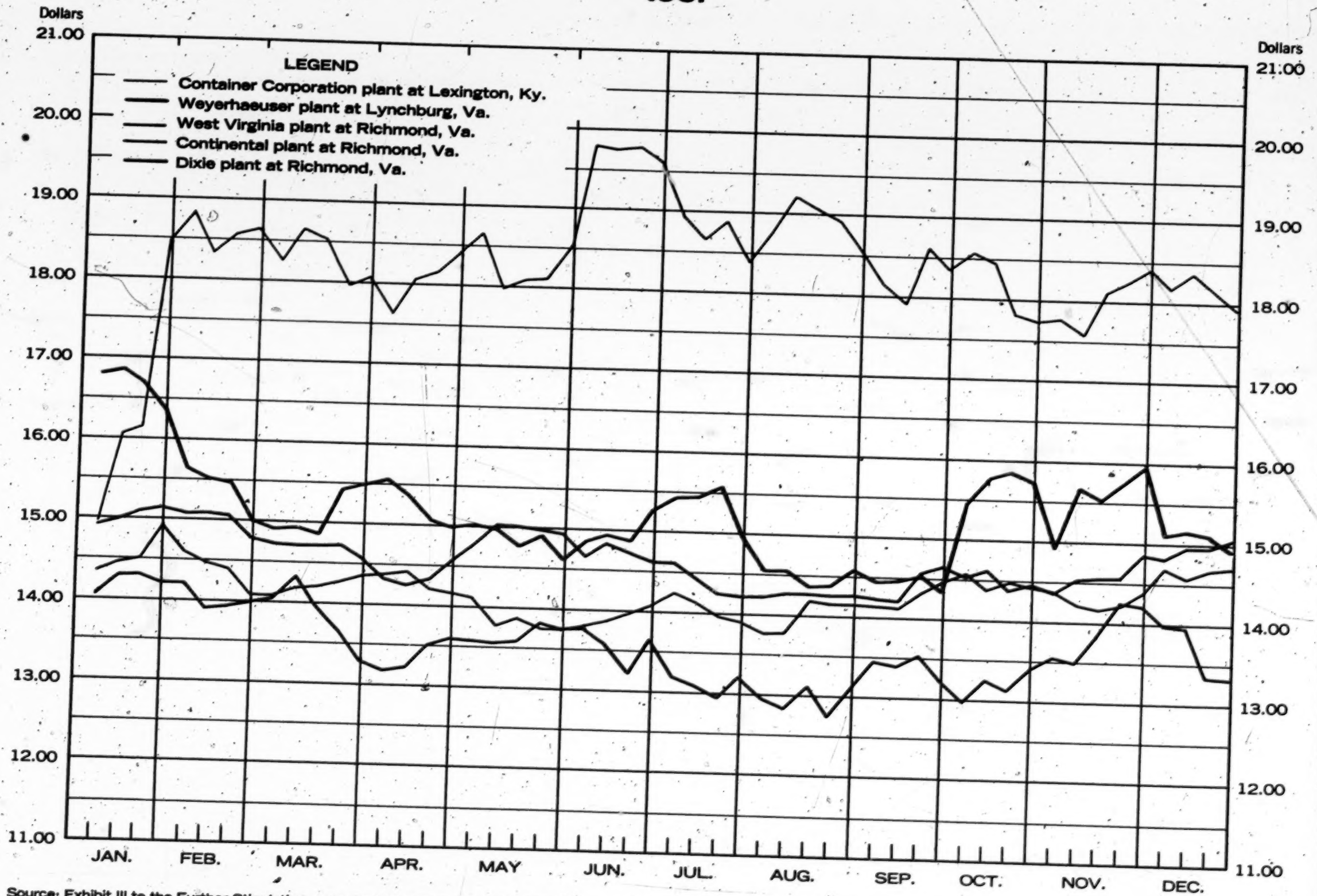


PRICE TRENDS BY PLANTS 1961



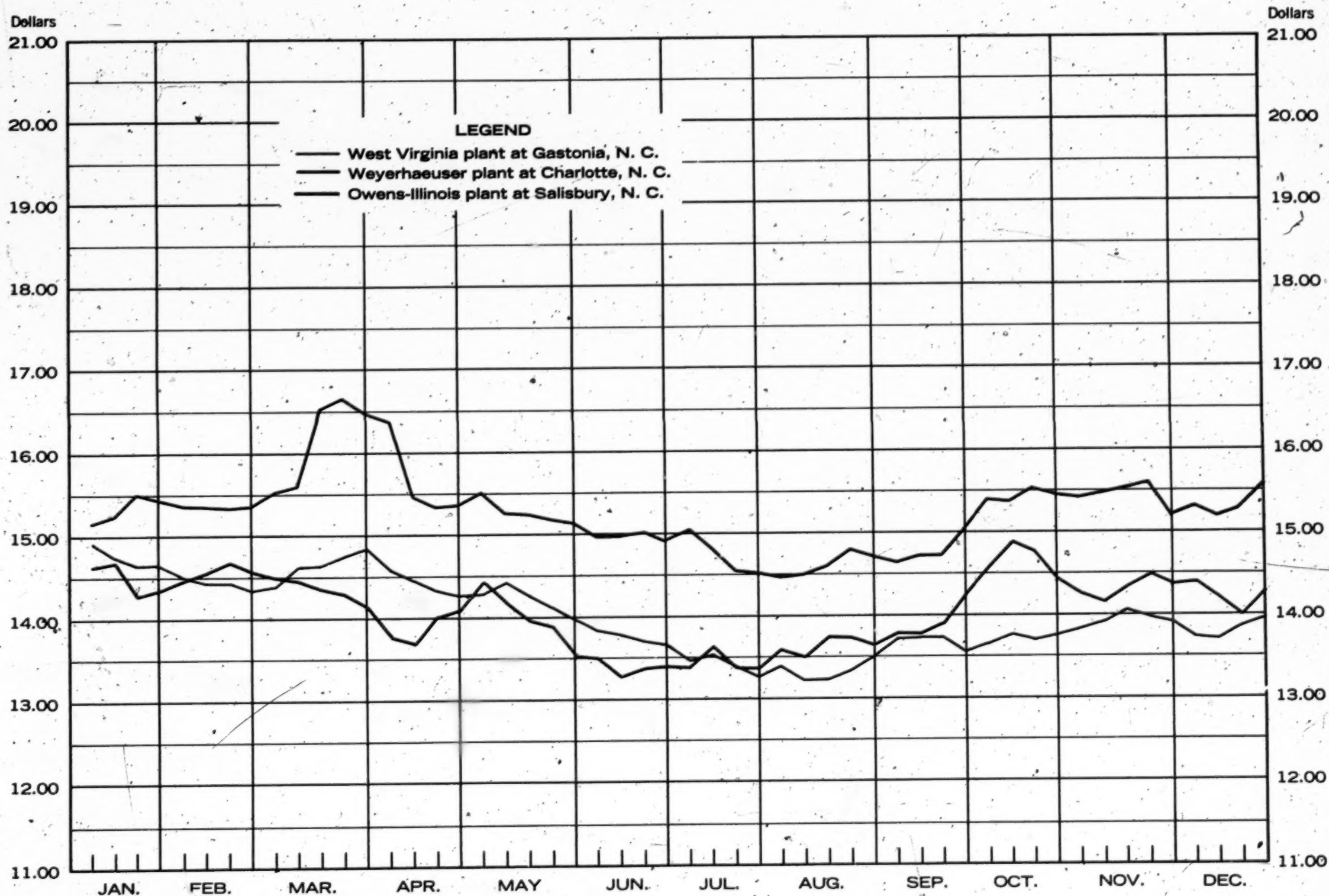
PRICE TRENDS BY PLANTS 1961

42



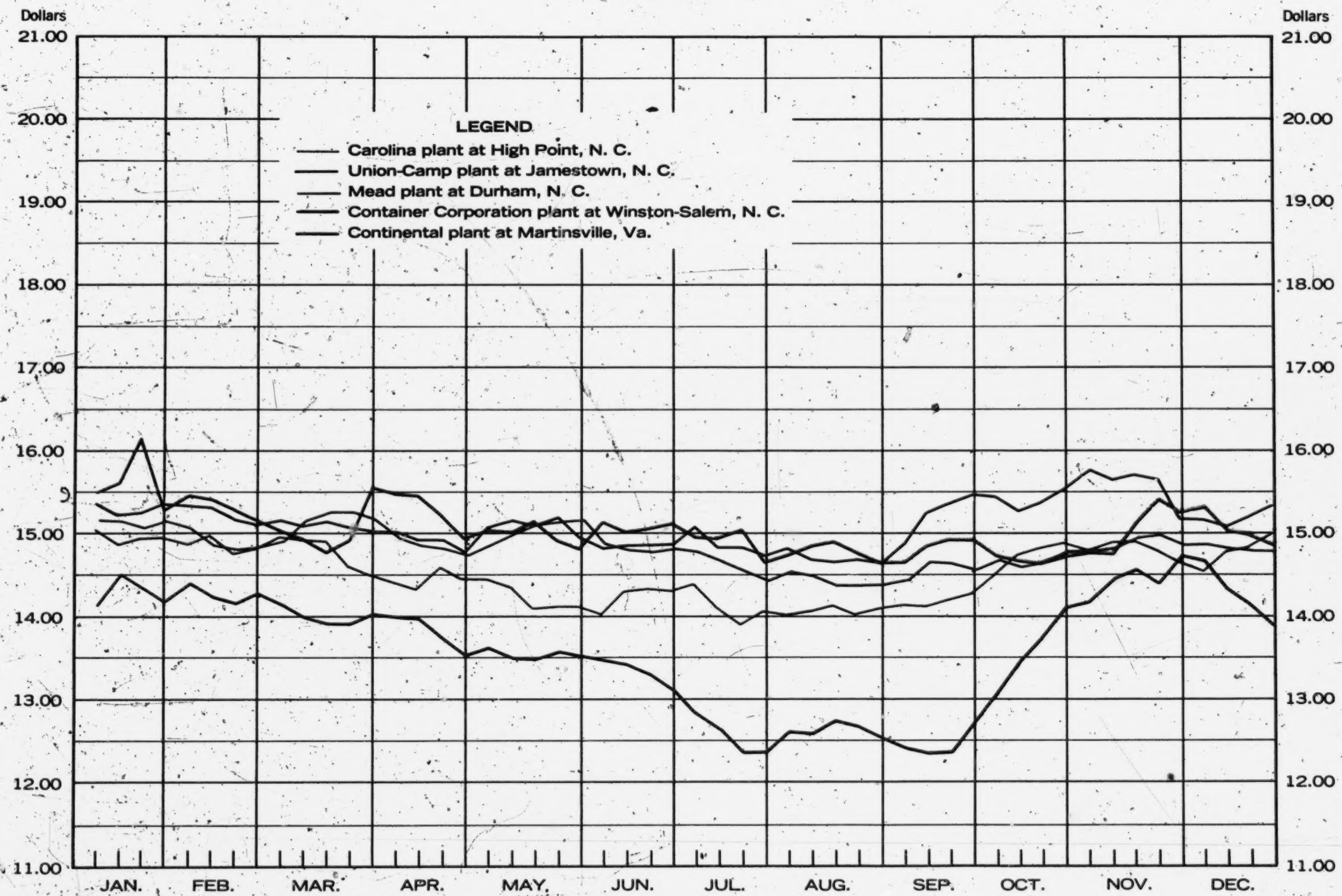
Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961



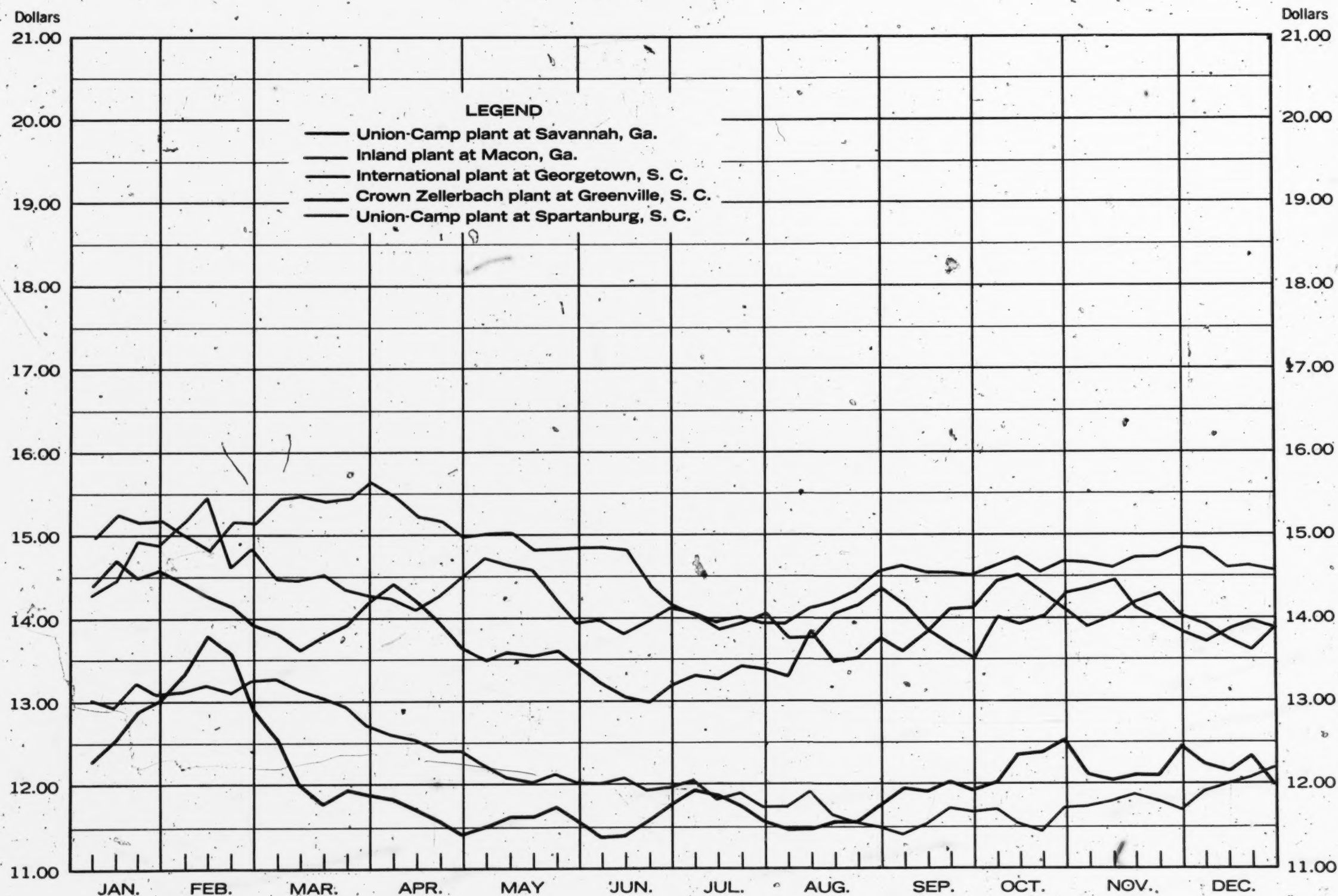
Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961



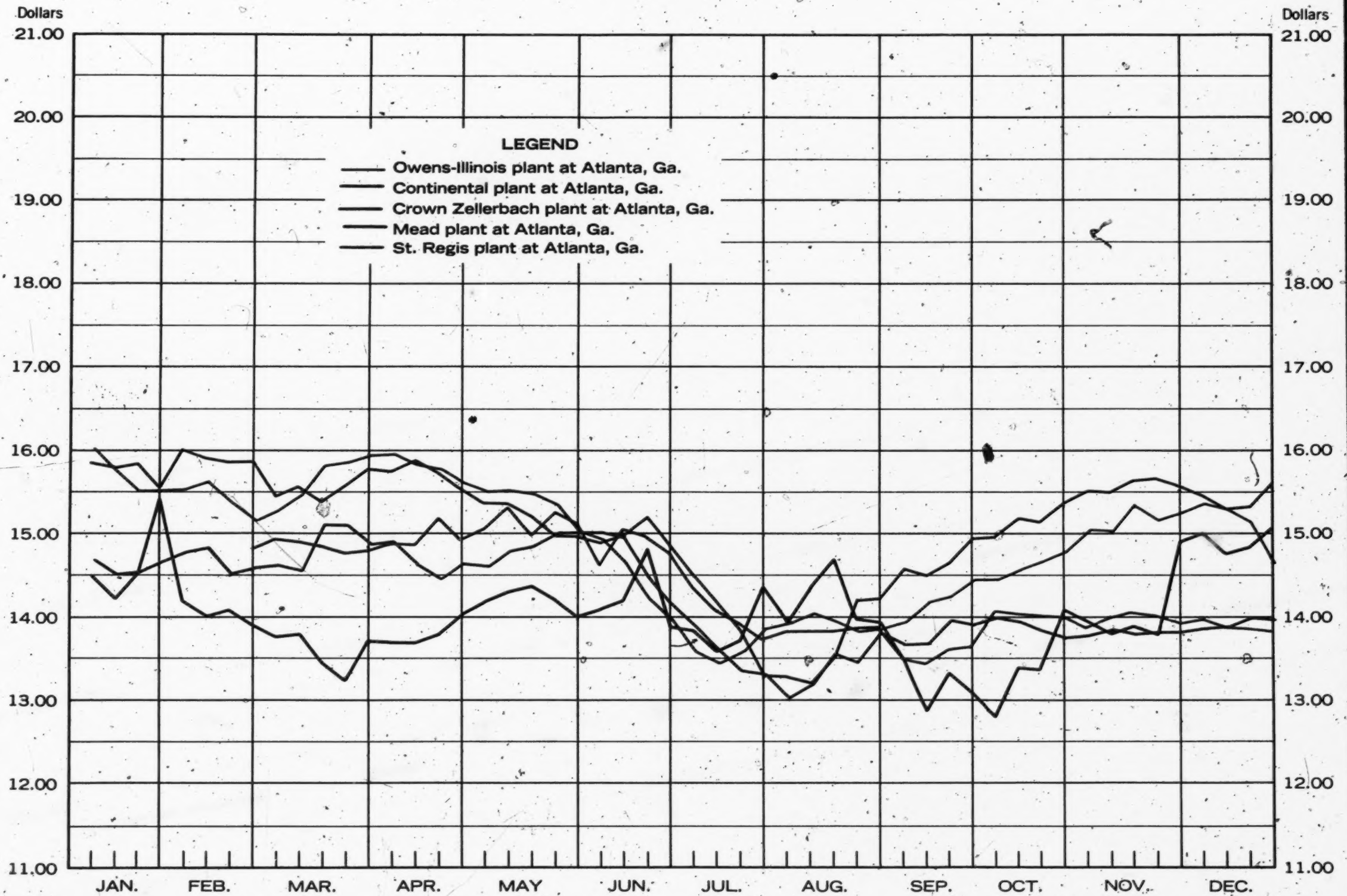
Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961



Source: Exhibit III to the Further Stipulation as to Certain Proof, May 14, 1965.

PRICE TRENDS BY PLANTS 1961

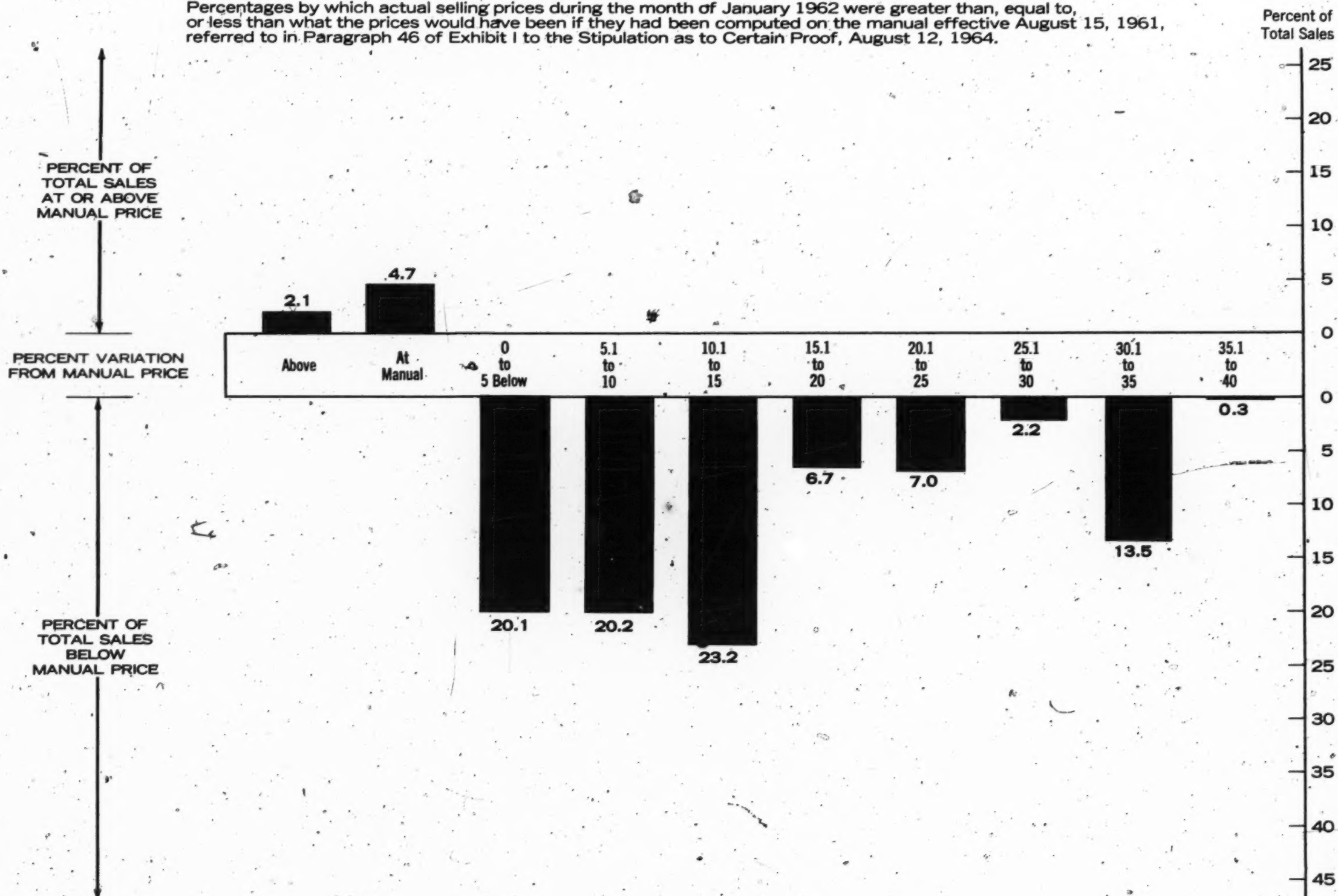


VARIATION FROM MANUAL PRICES OR BOARD LEVELS

These charts illustrate the fact that the great majority of sales of each defendant is made at prices less than the prices would have been if computed on any published manual, and that there is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. See Paragraph 10 of Exhibit I to the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE **CONTAINER CORPORATION PLANT AT WINSTON-SALEM, N.C.**

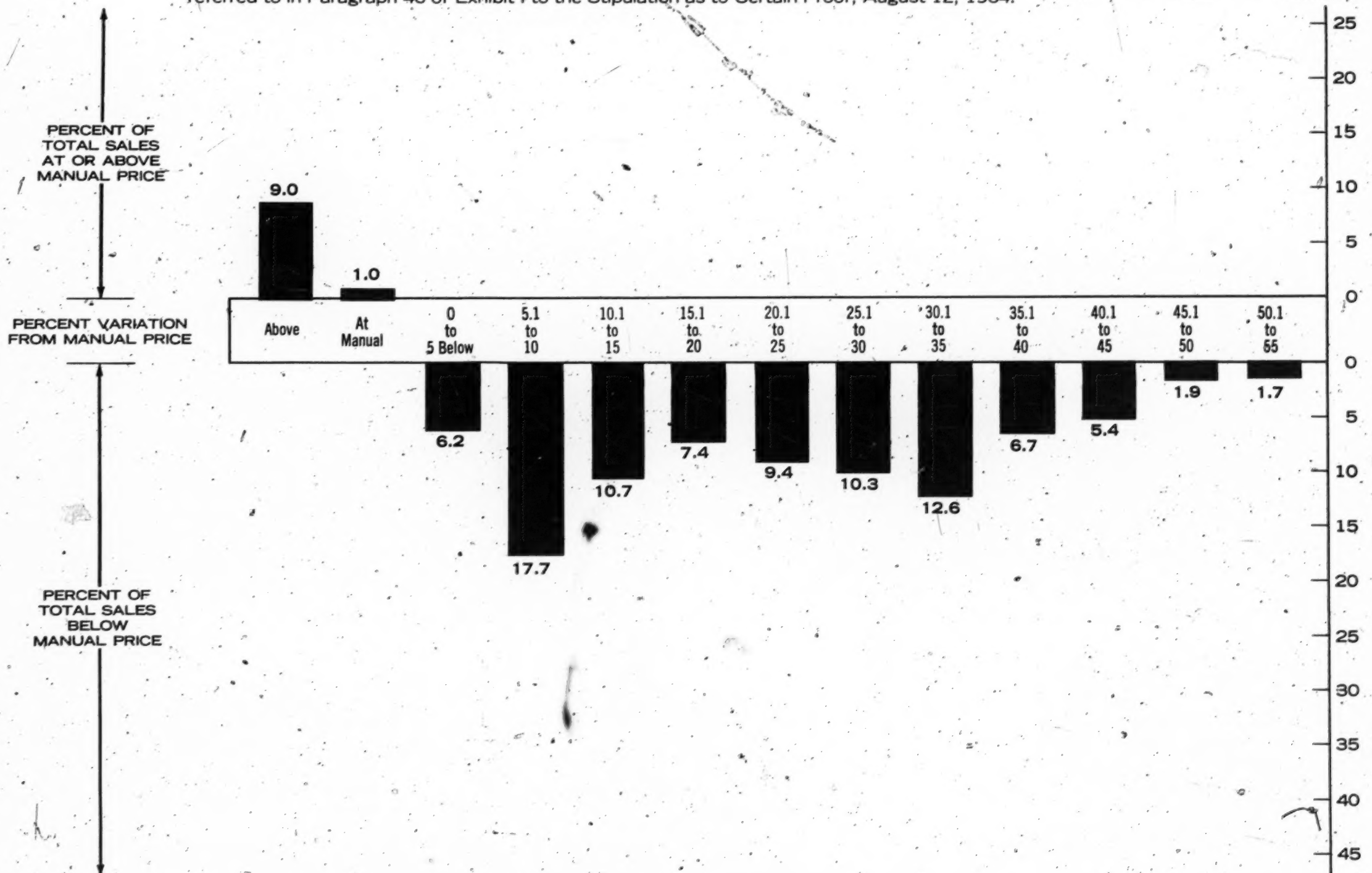
Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE **CONTAINER CORPORATION PLANT AT CHATTANOOGA, TENN.**

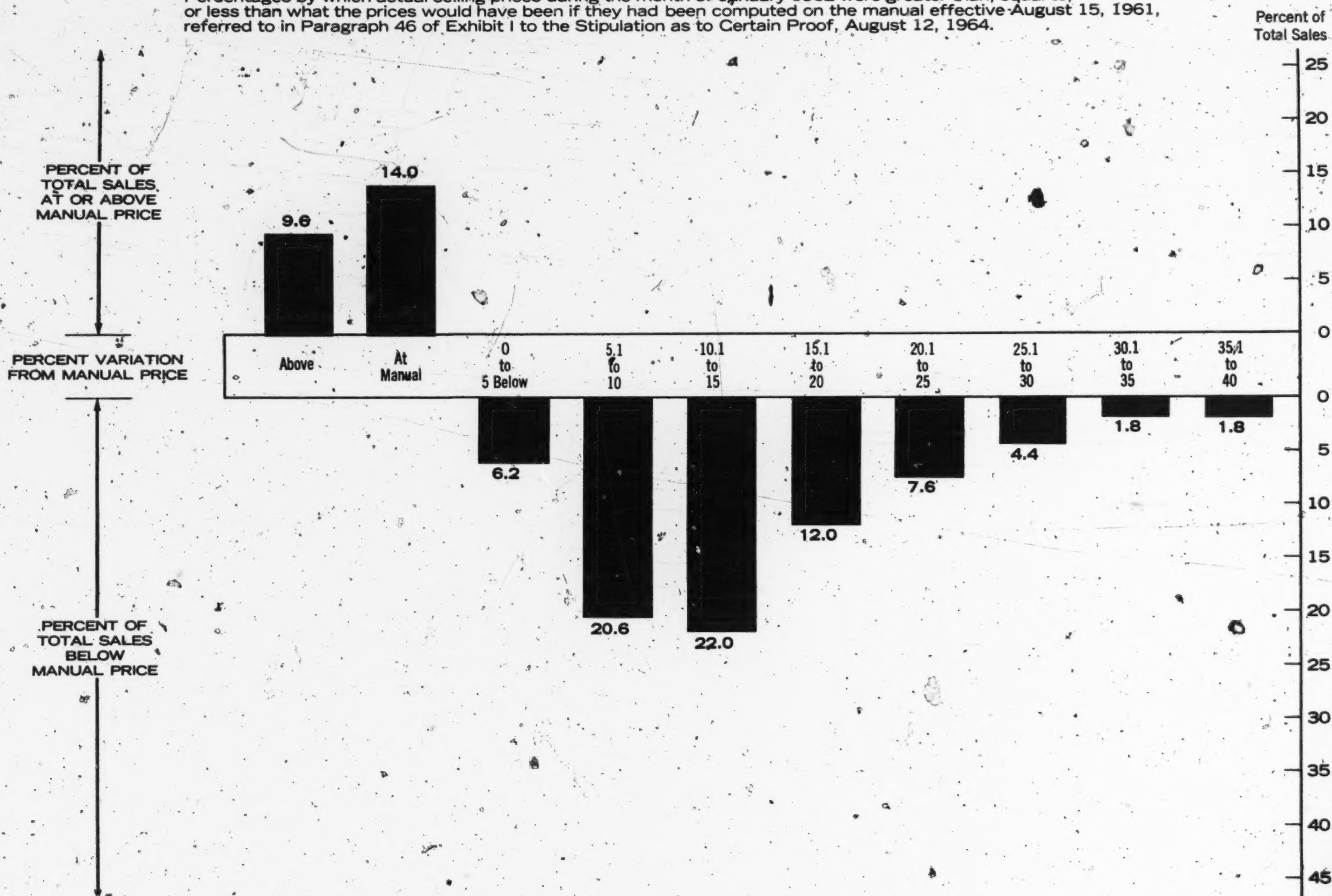
Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE CONTAINER CORPORATION PLANT AT KNOXVILLE, TENN.

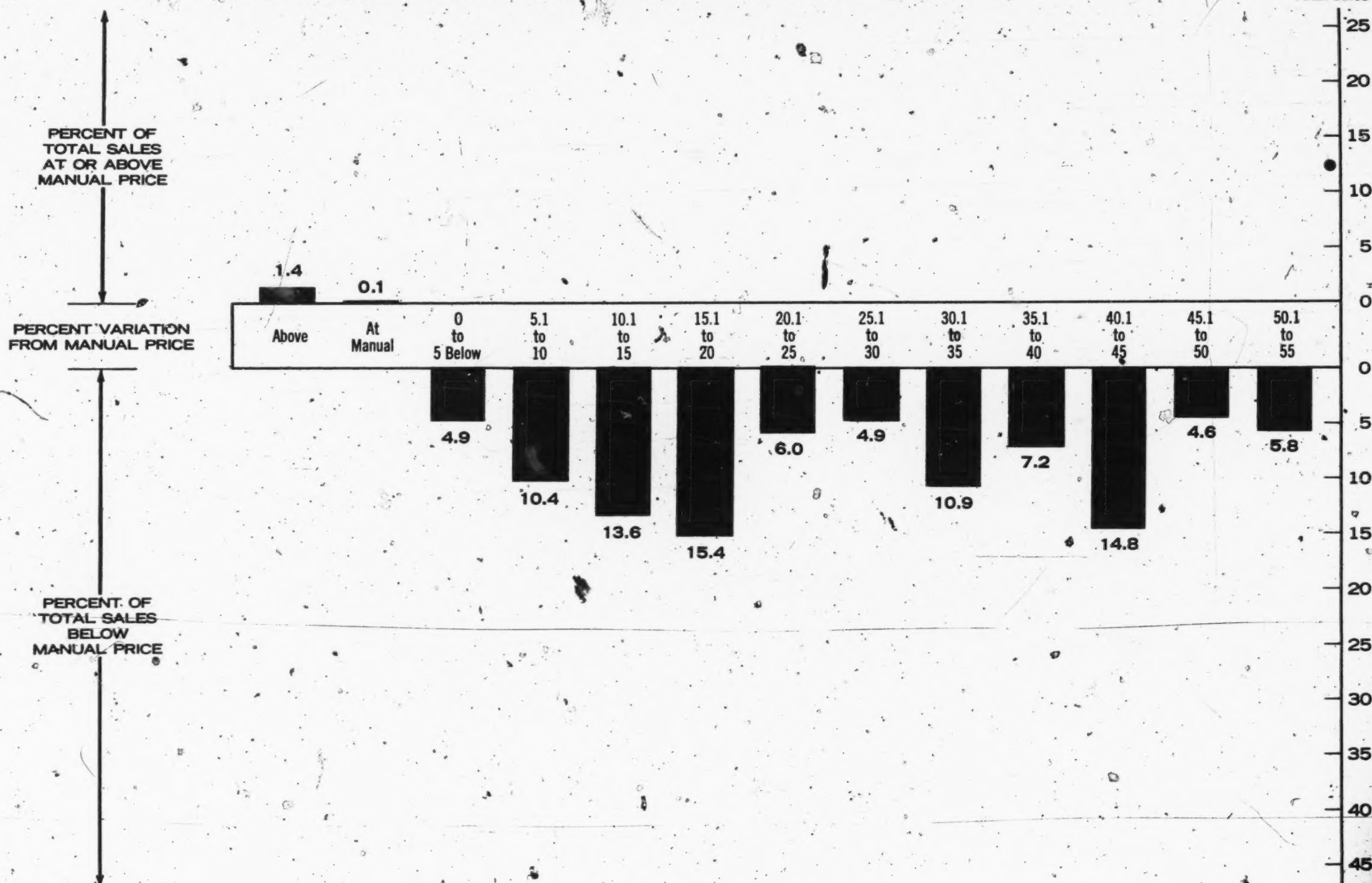
Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE **ALBEMARLE PLANT AT RICHMOND, VA.**

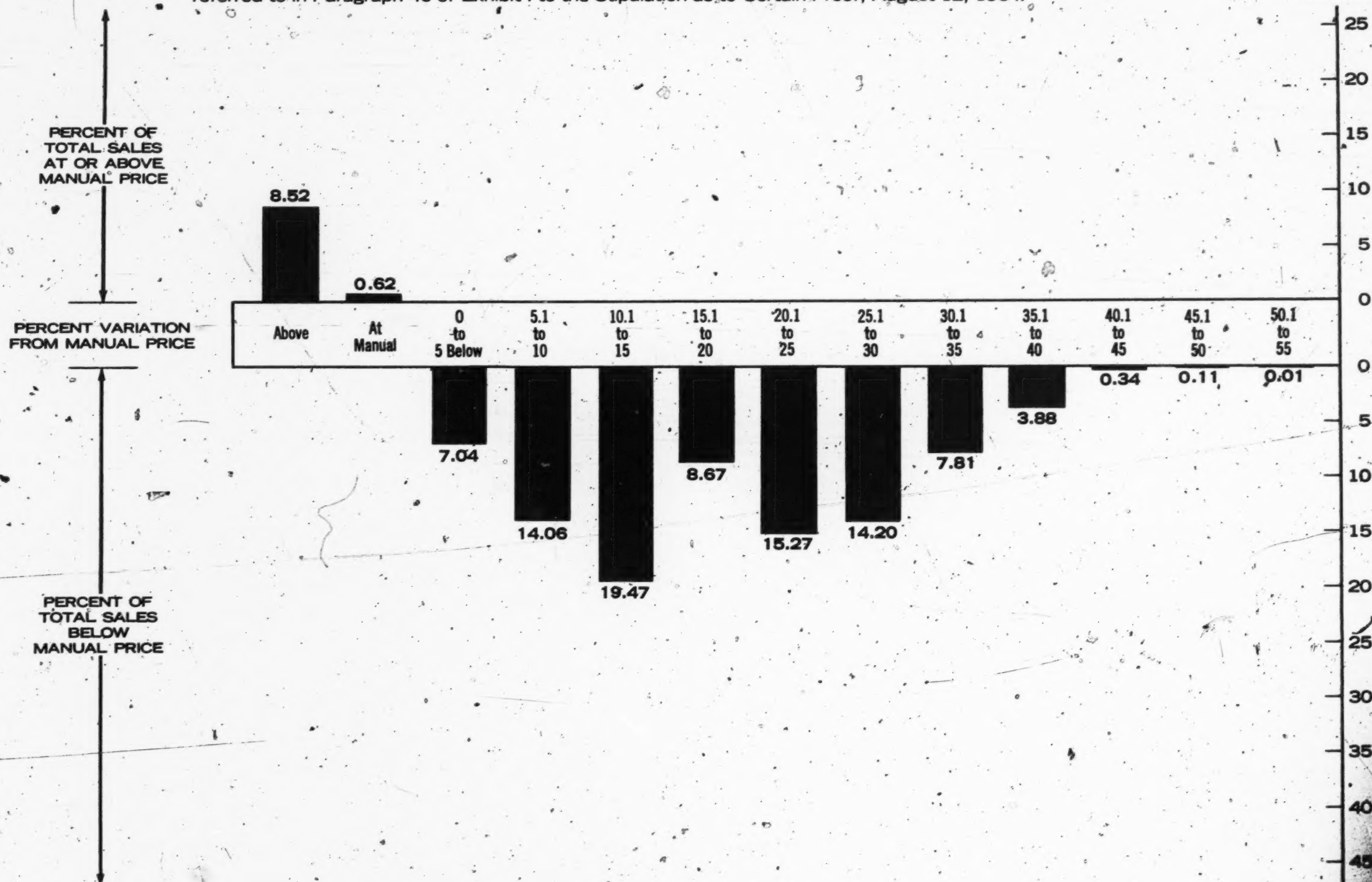
Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

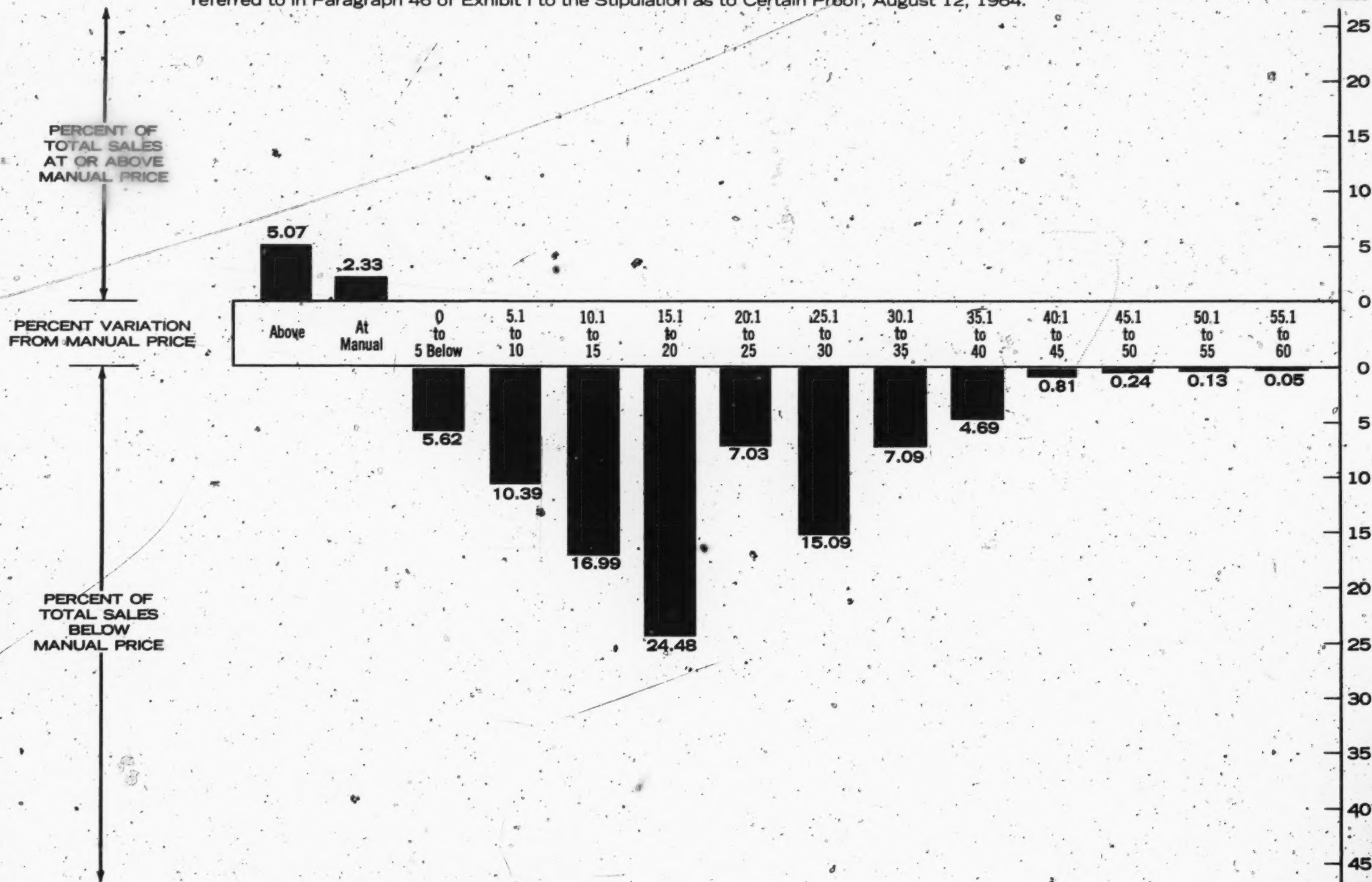
VARIATION FROM MANUAL PRICE CROWN ZELLERBACH PLANT AT ATLANTA, GA.

Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



VARIATION FROM MANUAL PRICE **CROWN ZELLERBACH PLANT AT GREENVILLE, S.C.**

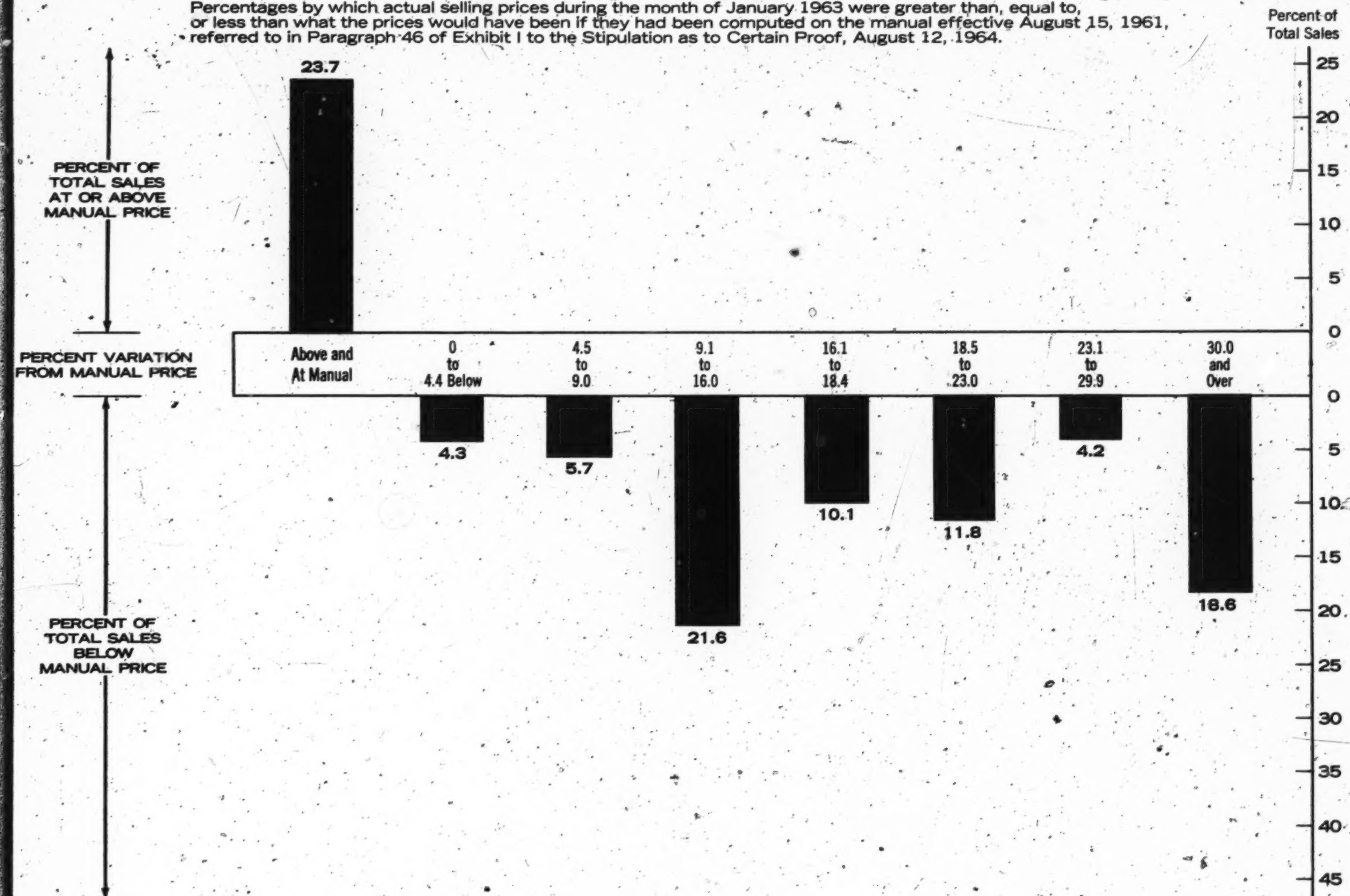
Percentages by which actual selling prices during the month of January 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE DIXIE PLANT AT RICHMOND, VA.

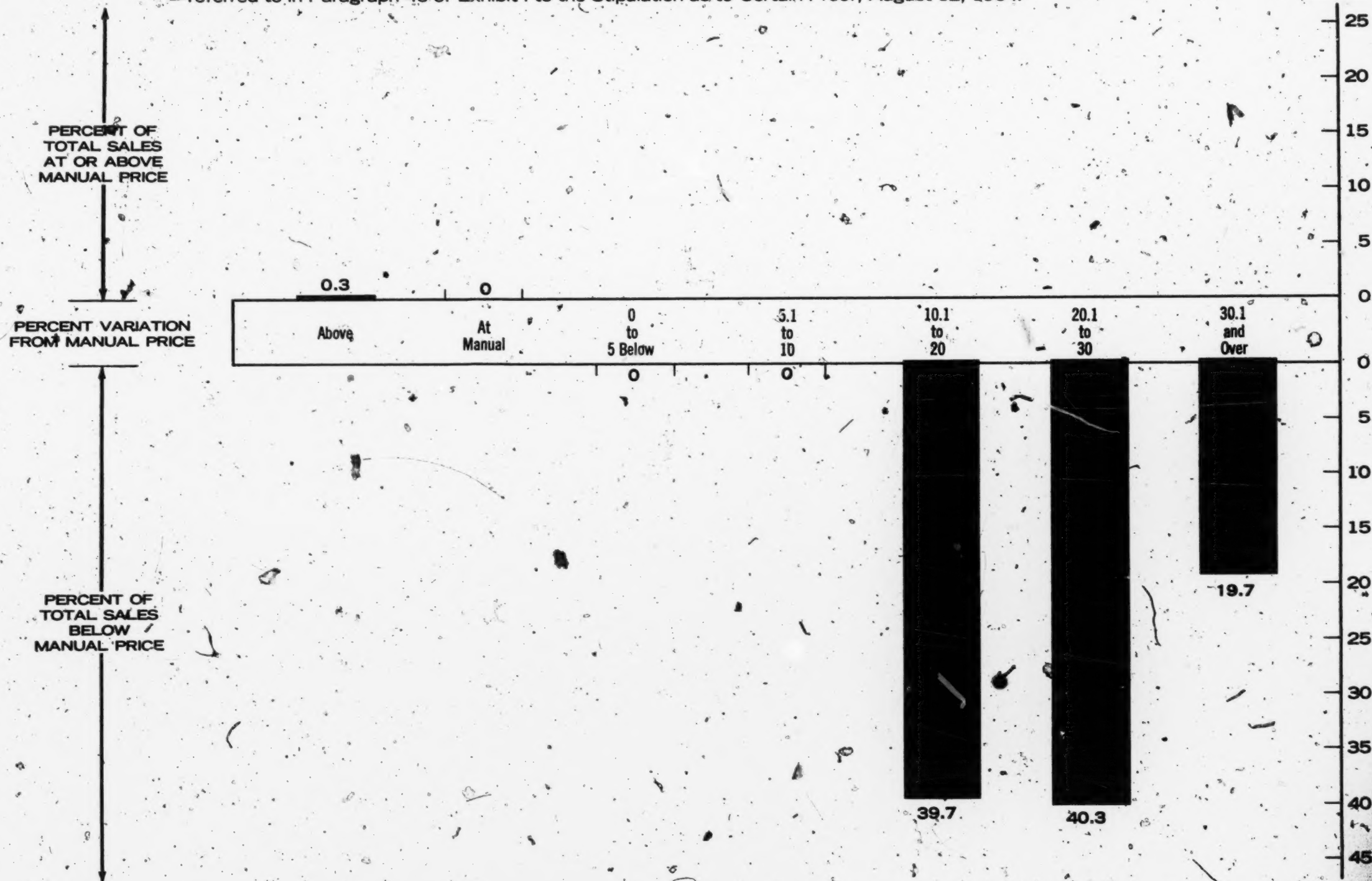
Percentages by which actual selling prices during the month of January 1963 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE INLAND PLANT AT MACON, GA.

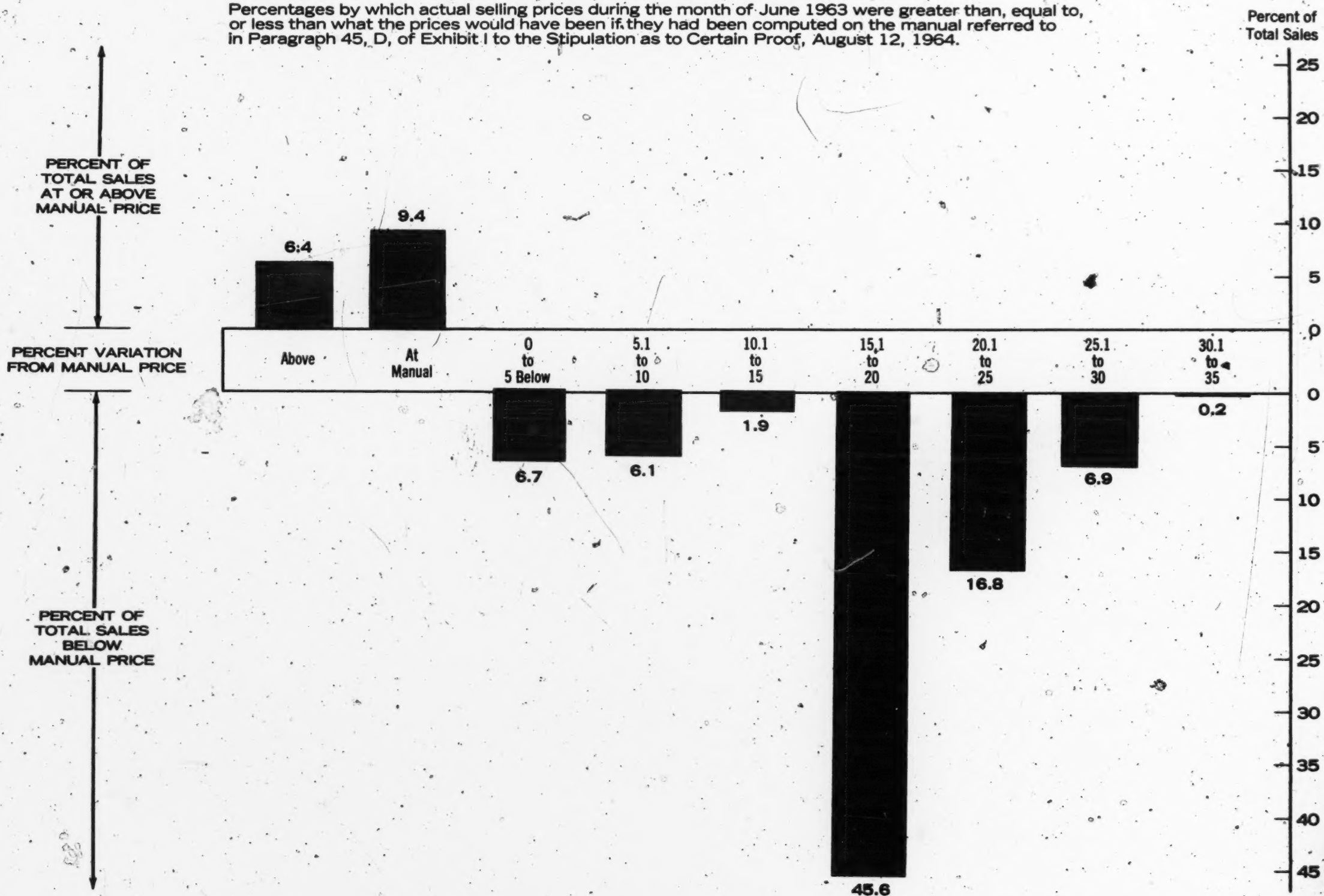
Percentages by which actual selling prices during the month of February 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE MEAD PLANT AT DURHAM, N.C.

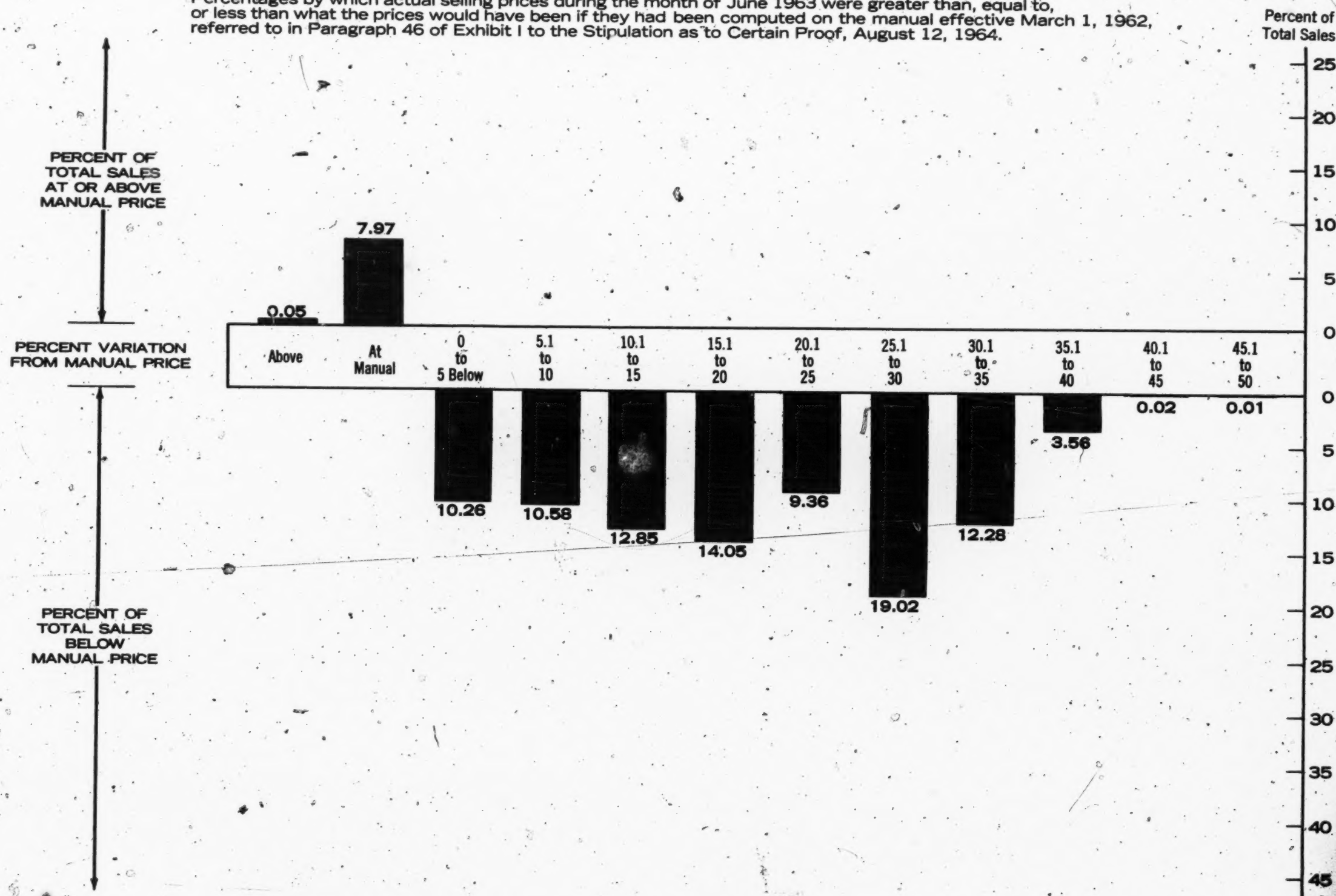
Percentages by which actual selling prices during the month of June 1963 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual referred to in Paragraph 45, D, of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE OWENS-ILLINOIS PLANT AT SALISBURY, N.C.

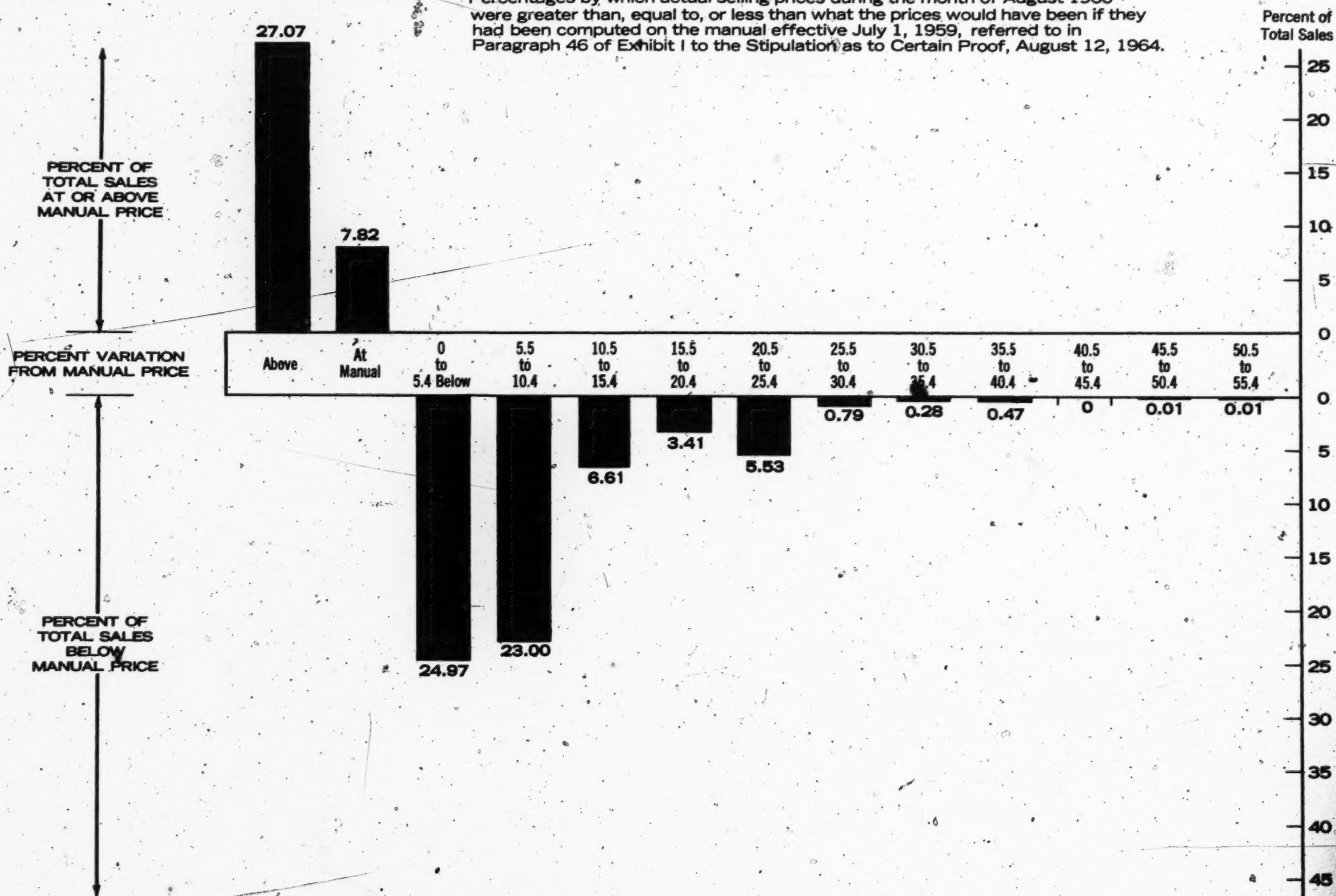
Percentages by which actual selling prices during the month of June 1963 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective March 1, 1962, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

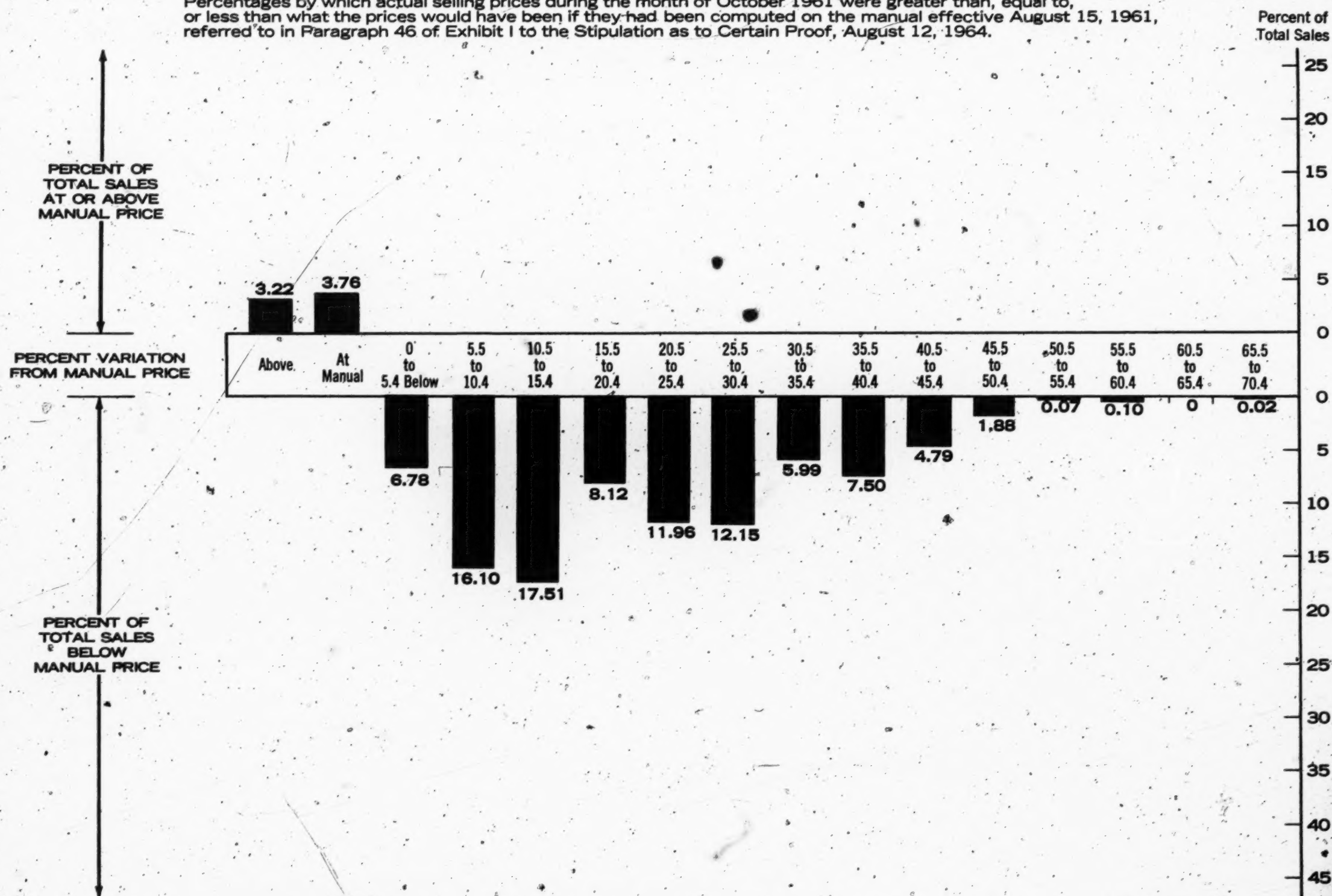
VARIATION FROM MANUAL PRICE **ST. JOE PLANT AT PORT ST. JOE, FLA.**

Percentages by which actual selling prices during the month of August 1960 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective July 1, 1959, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



VARIATION FROM MANUAL PRICE **ST. JOE PLANT AT BIRMINGHAM, ALA.**

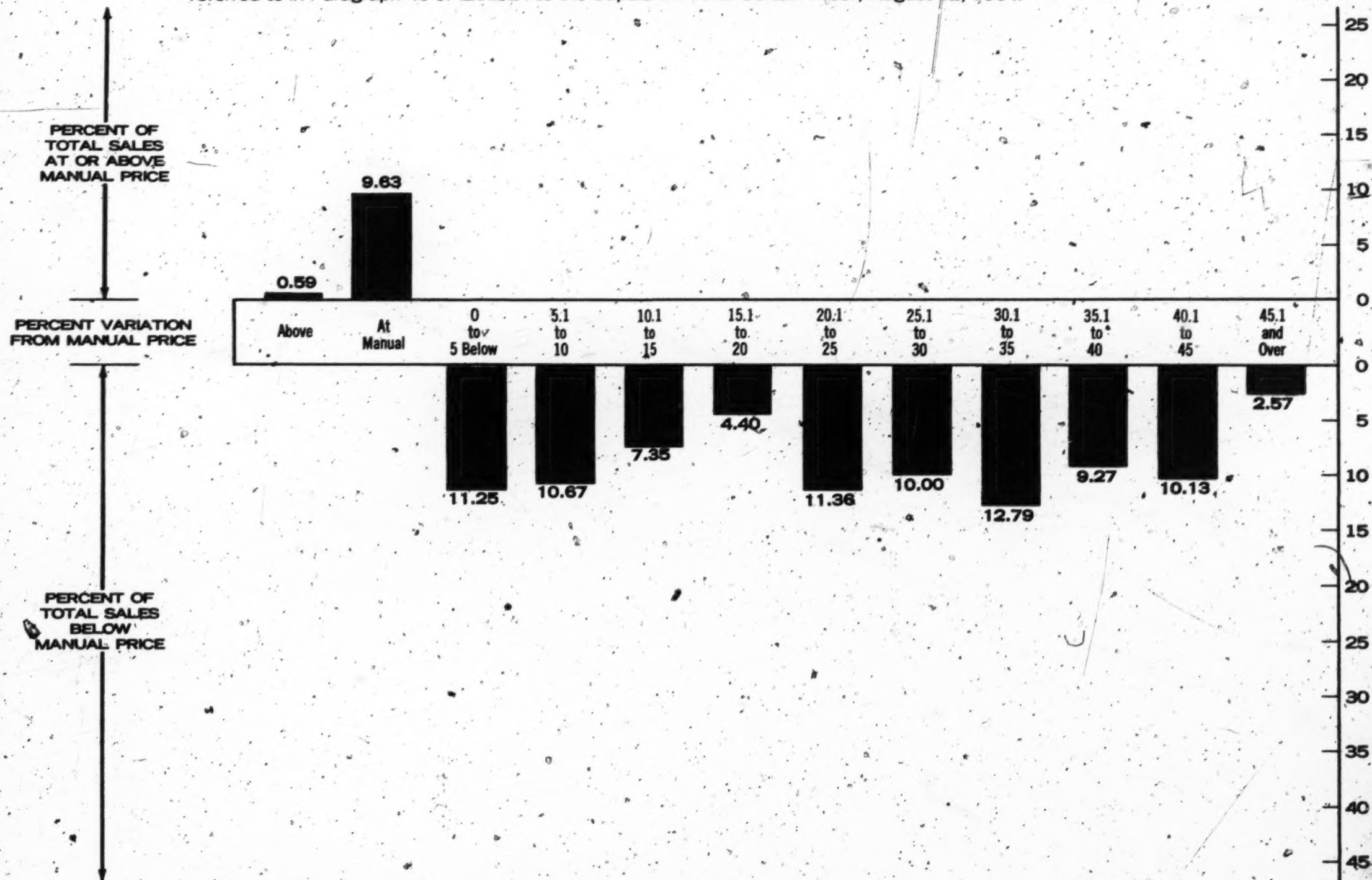
Percentages by which actual selling prices during the month of October 1961 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

VARIATION FROM MANUAL PRICE **WEST VIRGINIA PLANT AT GASTONIA, N.C.**

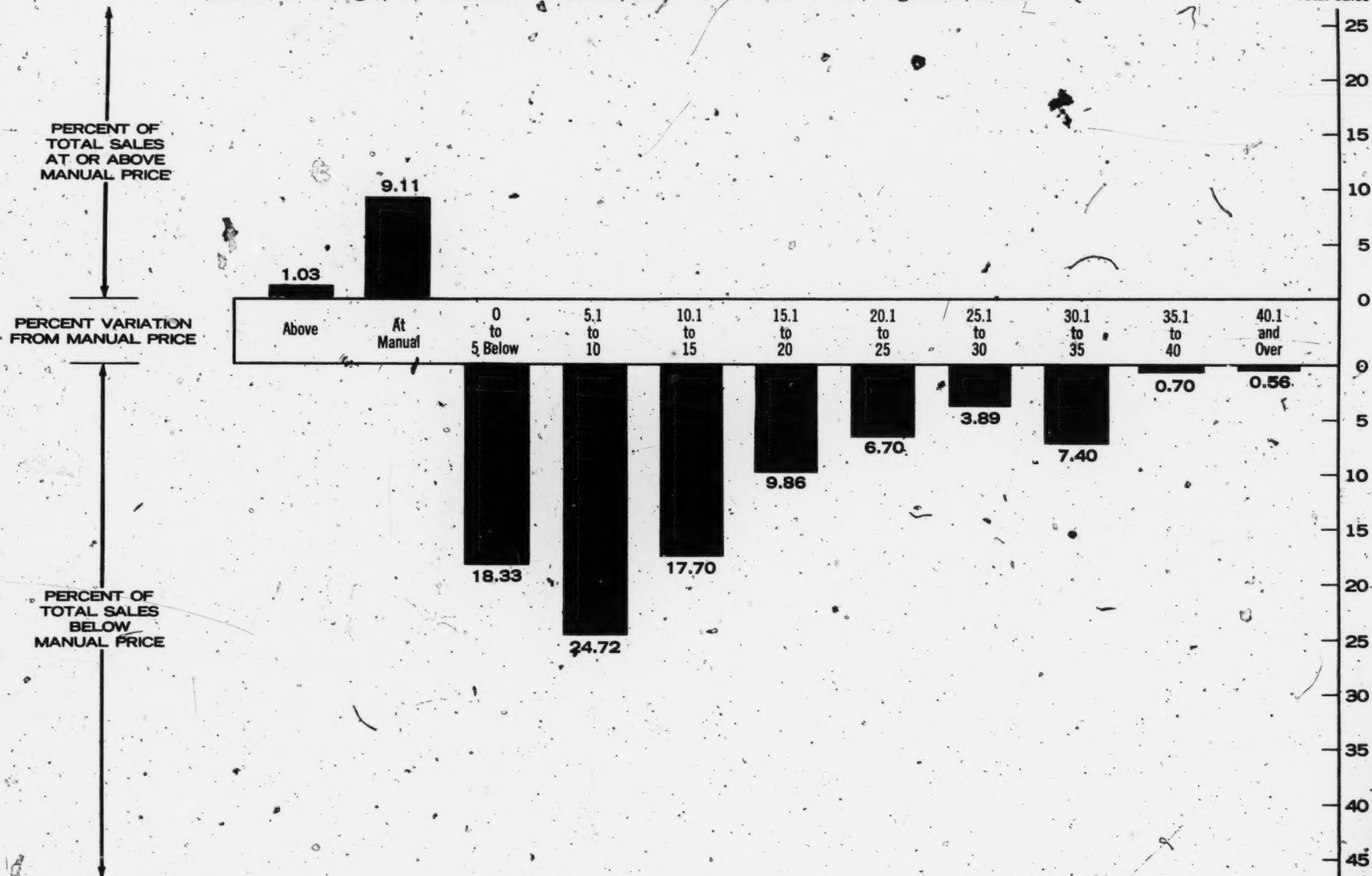
Percentages by which actual selling prices during the month of January 1963 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective March 1, 1962, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

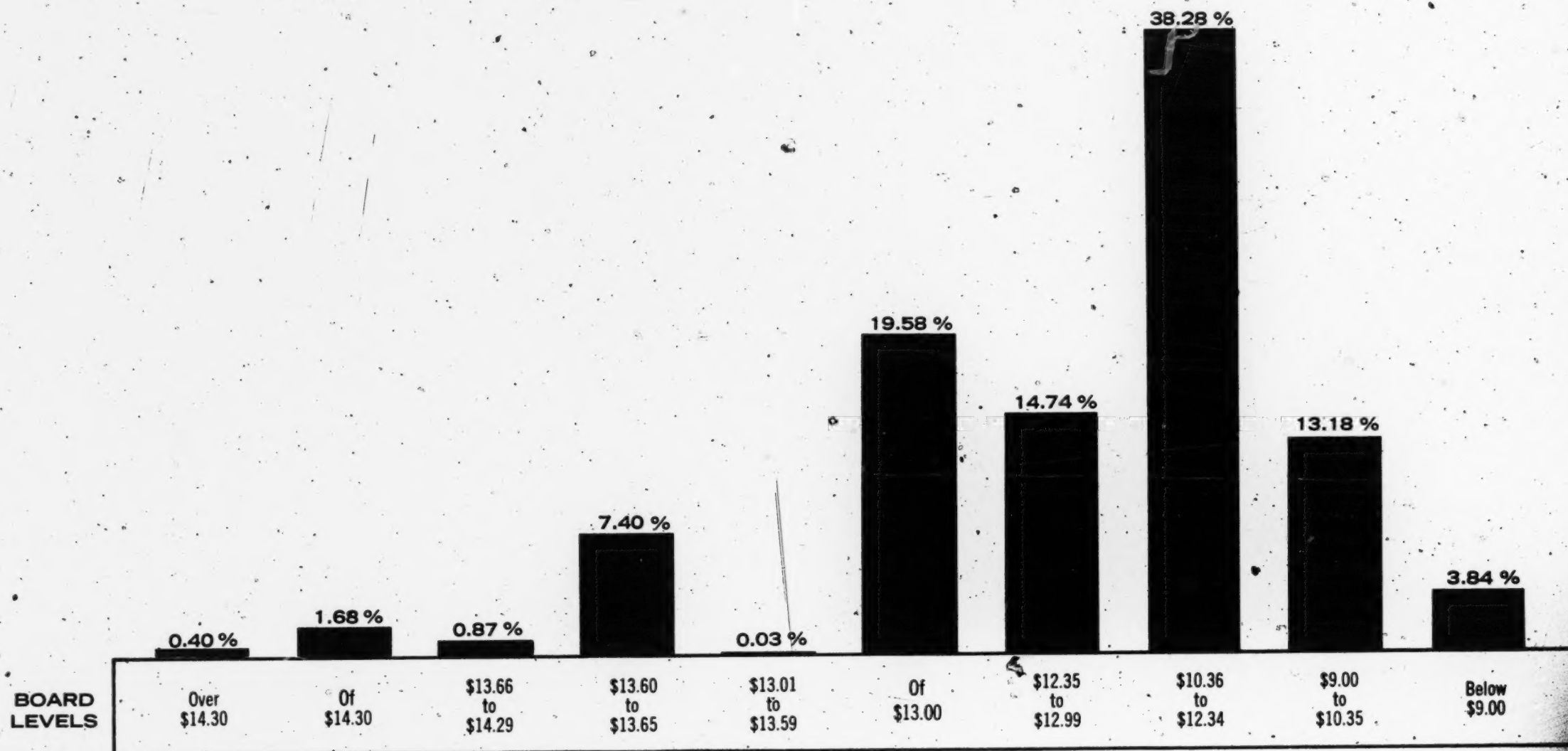
VARIATION FROM MANUAL PRICE **WEYERHAEUSER PLANT AT CHARLOTTE, N.C.**

Percentages by which actual selling prices during the month of March 1962 were greater than, equal to, or less than what the prices would have been if they had been computed on the manual effective August 15, 1961, referred to in Paragraph 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964.



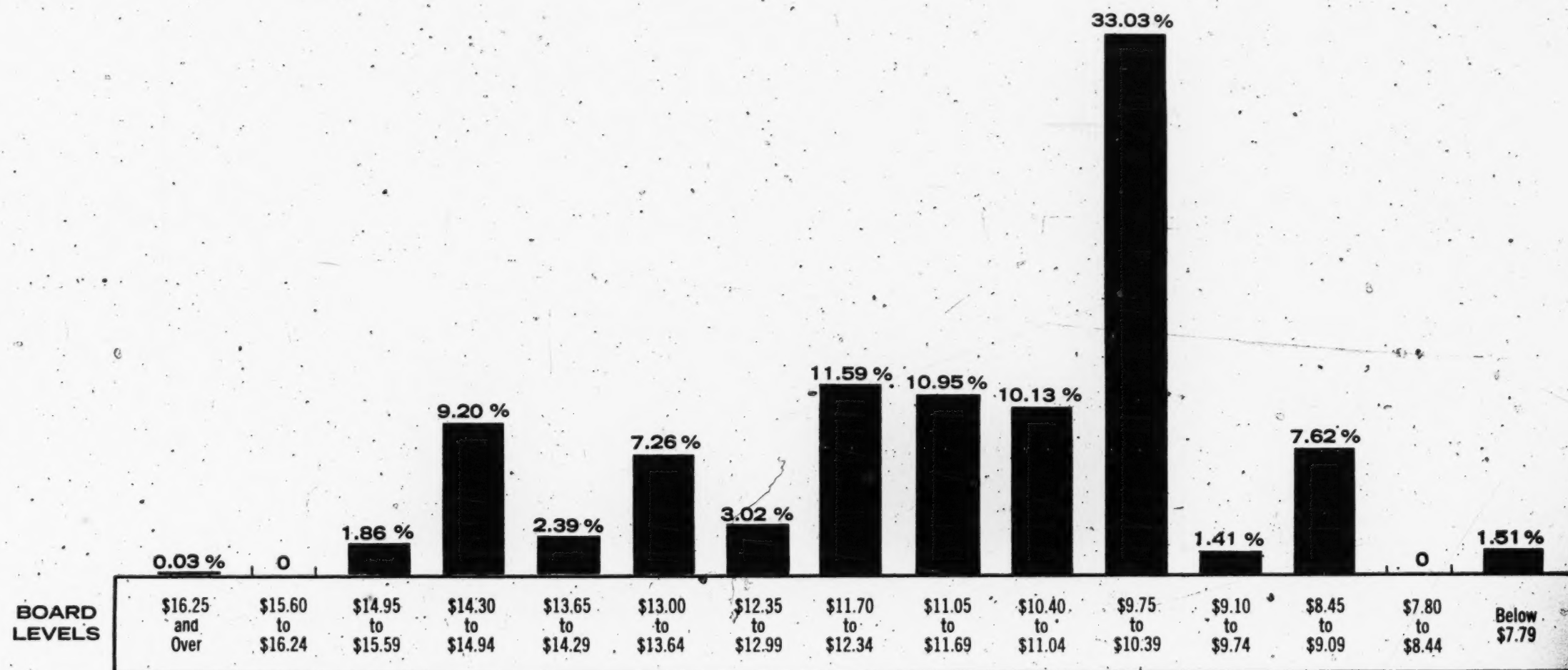
**PERCENTAGES OF SALES MADE DURING
JULY 1963, AT VARIOUS BOARD LEVELS
CONTINENTAL PLANT AT MARTINSVILLE, VA.**

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.



**PERCENTAGES OF SALES MADE DURING ONE WEEK
IN DECEMBER 1961, AT VARIOUS BOARD LEVELS
INTERNATIONAL PLANT AT GEORGETOWN, S.C.**

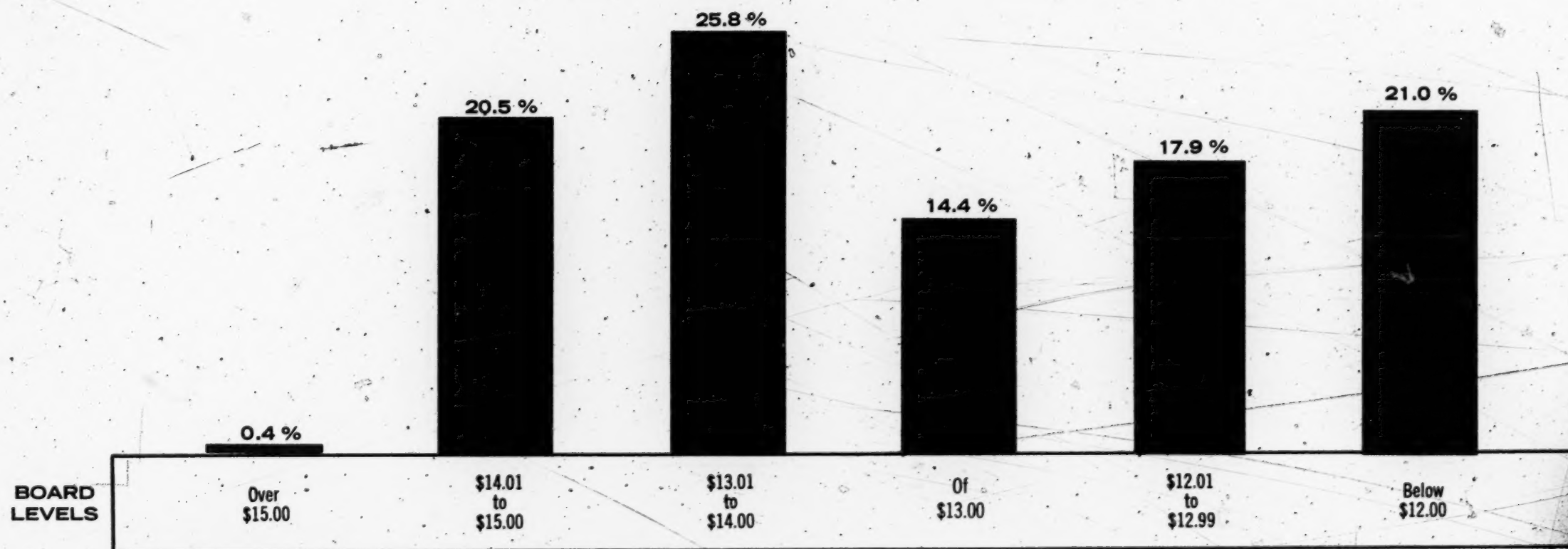
Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.



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**PERCENTAGES OF SALES MADE DURING
OCTOBER 1962, AT VARIOUS BOARD LEVELS
MILLER PLANT AT ROANOKE, VA.**

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.

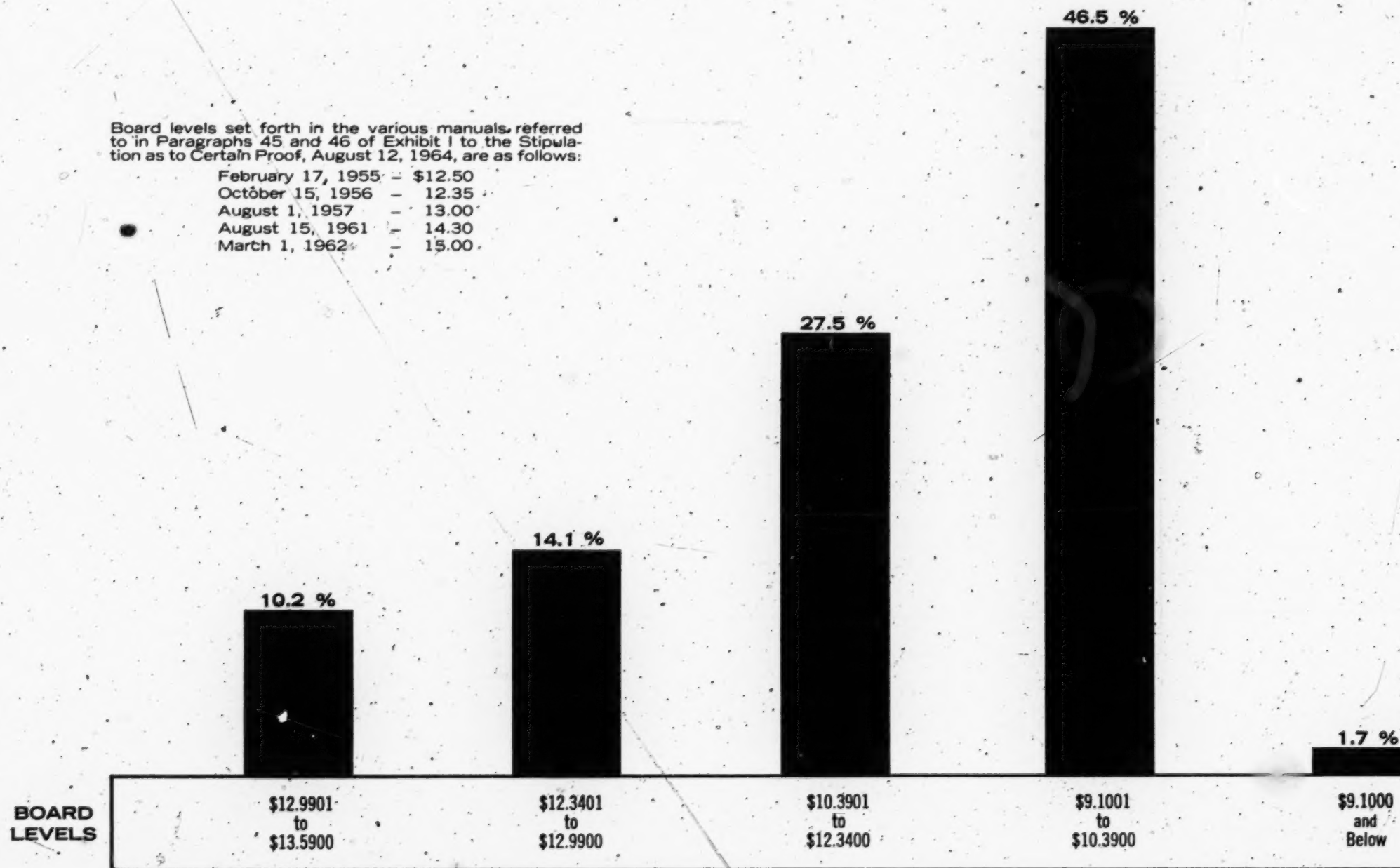


**PERCENTAGES OF SALES MADE DURING
JULY 1961, AT VARIOUS BOARD LEVELS
UNION-CAMP PLANT AT JAMESTOWN, N.C.**

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.

Board levels set forth in the various manuals, referred to in Paragraphs 45 and 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964, are as follows:

February 17, 1955 - \$12.50
October 15, 1956 - 12.35
August 1, 1957 - 13.00
August 15, 1961 - 14.30
March 1, 1962 - 15.00

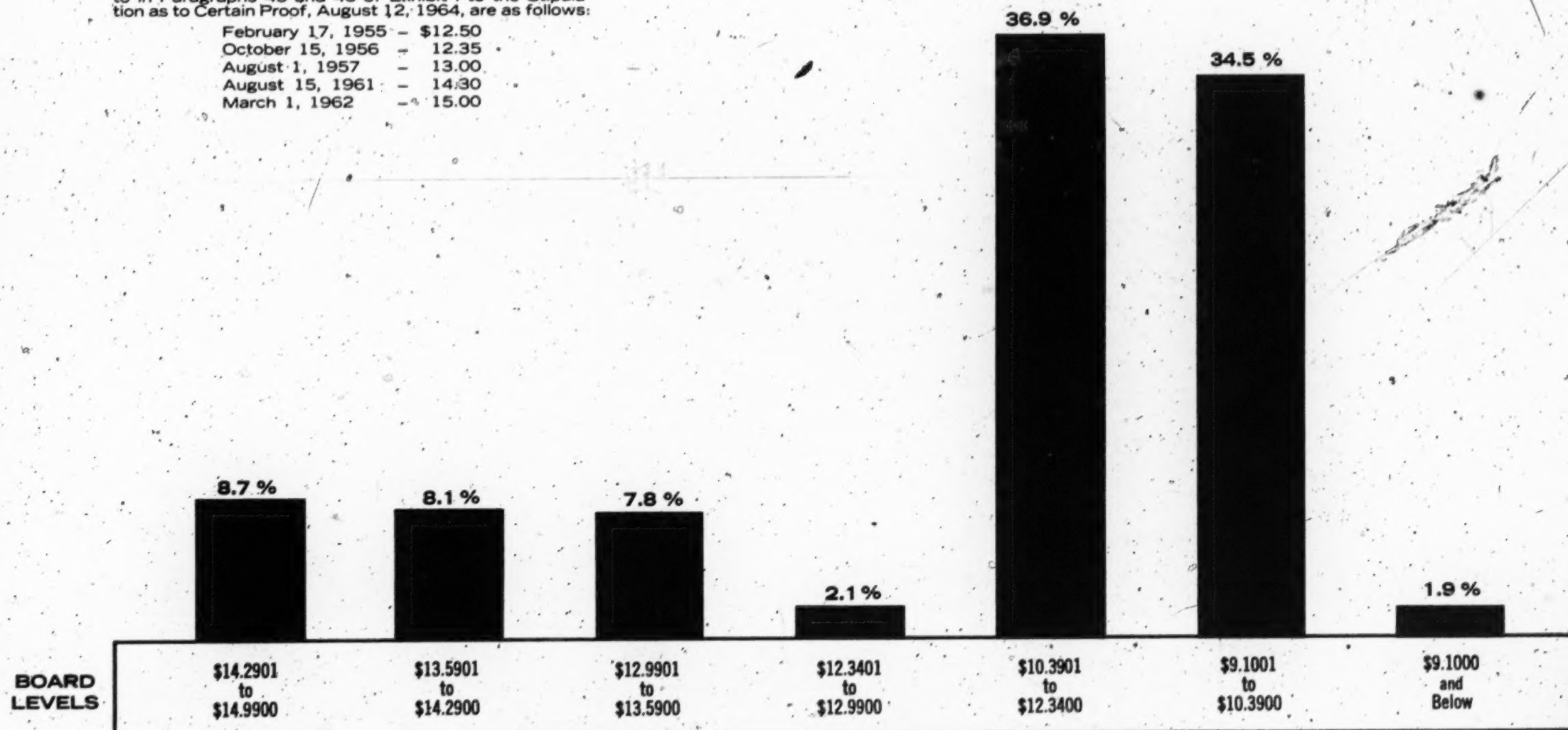


**PERCENTAGES OF SALES MADE DURING
OCTOBER 1961, AT VARIOUS BOARD LEVELS
UNION-CAMP PLANT AT JAMESTOWN, N.C.**

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.

Board levels set forth in the various manuals referred to in Paragraphs 45 and 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964, are as follows:

February 17, 1955 - \$12.50
October 15, 1956 - 12.35
August 1, 1957 - 13.00
August 15, 1961 - 14.30
March 1, 1962 - 15.00



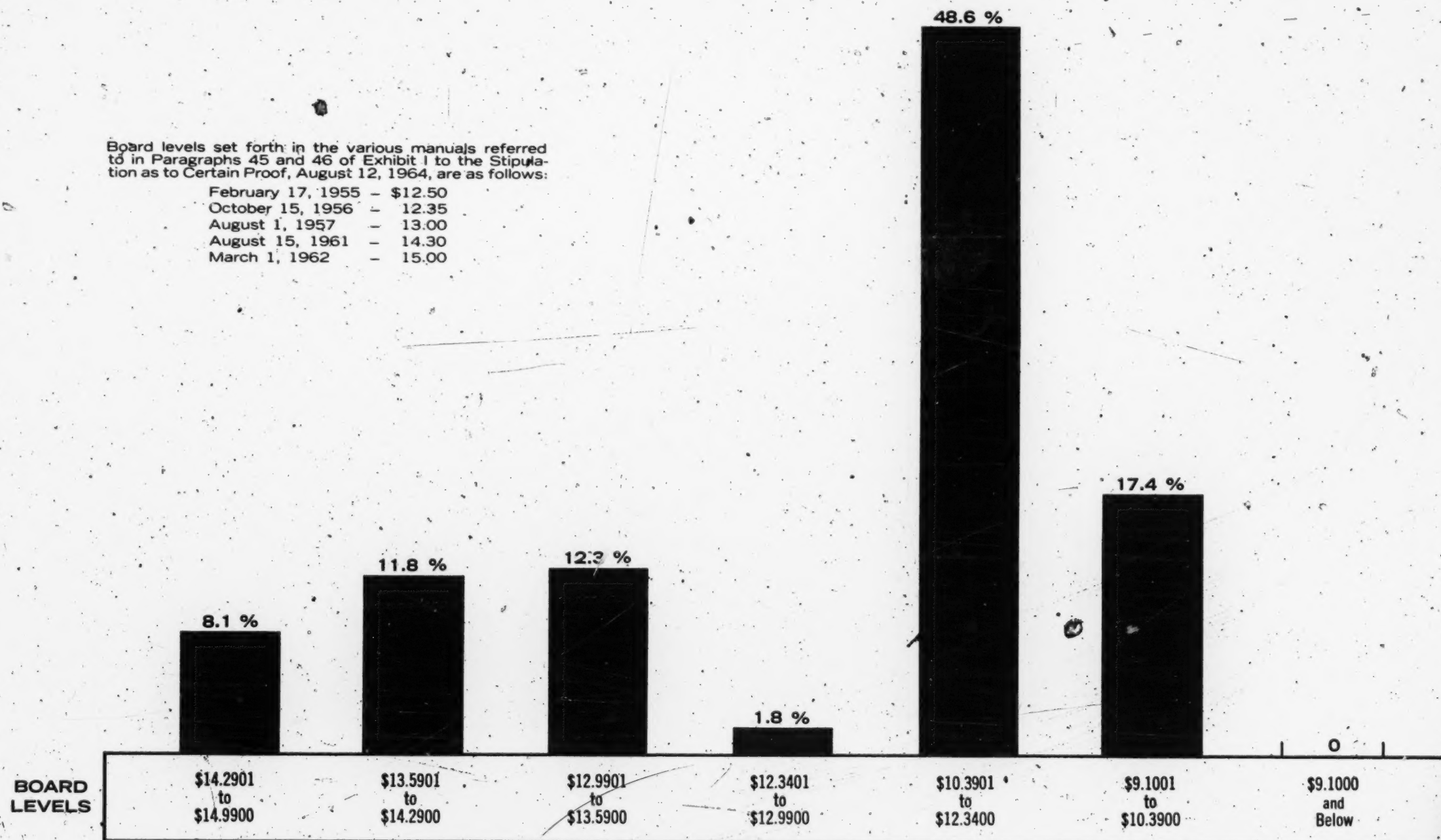
Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

PERCENTAGES OF SALES MADE DURING FEBRUARY 1962, AT VARIOUS BOARD LEVELS UNION-CAMP PLANT AT JAMESTOWN, N.C.

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.

Board levels set forth in the various manuals referred to in Paragraphs 45 and 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964, are as follows:

February 17, 1955 - \$12.50
October 15, 1956 - 12.35
August 1, 1957 - 13.00
August 15, 1961 - 14.30
March 1, 1962 - 15.00



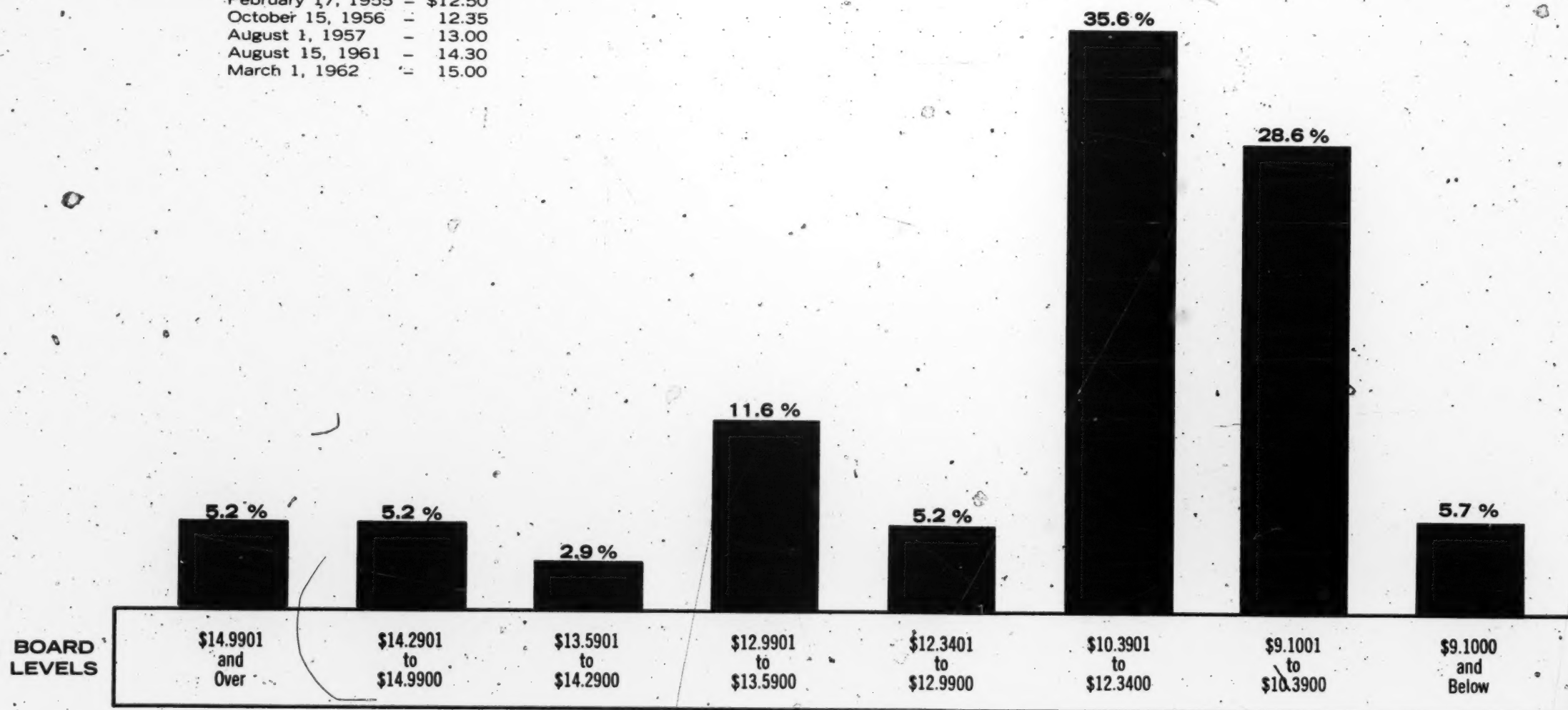
Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

**PERCENTAGES OF SALES MADE DURING
MARCH 1963, AT VARIOUS BOARD LEVELS
UNION-CAMP PLANT AT JAMESTOWN, N.C.**

Computed from actual selling prices and expressed in terms of the equivalent board level per 1,000 sq. ft. for 200 lb. test single wall container board.

Board levels set forth in the various manuals referred to in Paragraphs 45 and 46 of Exhibit I to the Stipulation as to Certain Proof, August 12, 1964, are as follows:

February 17, 1955 - \$12.50
October 15, 1956 - 12.35
August 1, 1957 - 13.00
August 15, 1961 - 14.30
March 1, 1962 - 15.00



Source: Table 3 of the Further Stipulation as to Certain Proof, May 14, 1965.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1064

UNITED STATES OF AMERICA, APPELLANT

v.

CONTAINER CORPORATION OF AMERICA, ET AL.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA**

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion, findings of fact and conclusions of law of the district court (App. A, *infra*, 27-128) are reported at 273 F. Supp. 18.

JURISDICTION

The judgment of the district court was entered August 31, 1967 (App. B, *infra*, pp. 129-130). A notice of appeal was filed on October 30, 1967. The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States v. Parke*,

Davis & Co., 362 U.S. 29; *United States v. Singer Manufacturing Co.*, 374 U.S. 174.

QUESTIONS PRESENTED

Since 1955 manufacturers in the paper box industry in the Southeastern United States have, upon request, furnished each other price information from which a manufacturer bidding on a specific order by a particular customer can determine the price his competitor is asking. The questions presented are:

1. Whether the defendants' actions constitute an "agreement" or "combination" to exchange price information, within the meaning of Section 1 of the Sherman Act.
2. Whether such agreement or combination violates Section 1 because it restrains price competition.

STATUTE INVOLVED

The relevant portion of Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, reads as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

STATEMENT

1. THE PROCEEDINGS

On October 14, 1963, the United States filed a complaint charging that nineteen¹ manufacturers of cor-

¹The case against one of the 19 original defendants was dismissed after that firm went out of business.

rugated paper containers in the Southeastern United States² had, from 1955 to the date of filing, participated in an "agreement, understanding and concert of action" to exchange information as to the prices each had most recently charged or quoted to specific customers in that area for the purpose and with the effect of restricting competition among themselves in the sale of corrugated containers. The defendants both denied these allegations and asserted as an affirmative defense that any exchange of price information was sanctioned by a consent decree entered in 1940 in a prior government antitrust suit against some of them.

The case was tried in a day and a half without a jury. The government's case consisted of stipulated facts, 25 documents and testimony by deposition of two pricing officials from each of the 18 defendants. Defendants relied on the same stipulated facts, plus certain statistical tables, charts and about 1,000 documents, mainly intracorporate memoranda and communications with customers, which were offered to prove the existence of price competition in this industry. The court held for the defendants and dismissed the complaint. It entered general findings and findings as to each defendant individually.

2. THE FACTS

A. THE INDUSTRY

Defendants, who account for 90 percent of the shipments of corrugated containers from plants in the

² The Southeastern United States is defined as the States of Virginia, North and South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky.

Southeastern United States, have had since 1961 annual aggregate sales there of more than \$100 million (F. 8).³ In each year during the period covered by the complaint (1955 to 1963), productive capacity in the Southeastern market has exceeded demand for corrugated containers (F. 12). During this same period, the industry has expanded from 30 manufacturers (9 of whom are defendants) with 49 manufacturing plants, to 51 manufacturers (18 of whom are defendants) with 98 manufacturing plants (F. 9). An ample supply of raw materials and machinery make entry relatively easy. An initial investment of only \$50,000 to \$75,000 is sufficient for a viable enterprise (F. 11). Costs of manufacturing corrugated containers vary from plant to plant (F. 13), and there is no general uniformity of prices among the defendants, or among the plants of an individual defendant (F. 21).

From 1955 to 1963 corrugated container prices trended down (F. 15); prices of corrugated board, the basic material used in the manufacture of these containers (F. 6), fluctuated, but were approximately the same at the beginning and the end of the period; and labor rates, machine costs and other production costs increased,⁴ as did the general price trend of all

³ "F" refers to the district court's numbered findings of fact. "CX" refers to the exhibits admitted by agreement of both sides as the court's exhibits. "Tr." refers to the transcript of proceedings in the district court. "DX" refers to the defendants' exhibits, and "PX" refers to the government's exhibits.

⁴ Defendants presented evidence showing that labor costs per unit increased during this period, although only one-third as much as the hourly rate increased (DX-6). There is no evidence that the total unit costs actually increased, nor is there any evidence suggesting that profits trended downward during this period.

commodities except food and farm commodities (F. 15).

B. NATURE OF THE MARKET

Demand for corrugated containers, which increased from slightly more than 9 billion square feet sold in 1955 to almost 16 billion square feet sold in 1963 (F. 9), is determined by the volume of sales of disparate products manufactured and sold by 10,000 buyers of such containers (F. 14, 10). At any particular time, demand for containers is based upon current shipping needs of purchasers,⁵ and therefore appears to be quite inelastic.

Corrugated containers are a custom-made product—i.e., they are manufactured and sold on customers' orders in accordance with specifications of the particular customer as to dimensions, weight, color, and so forth (F. 5)—but all containers made to such specifications are substantially identical regardless of who produces them (F. 28). Therefore, the prices the purchasers will pay are determined on the basis of available price alternatives (F. 28).

The court found that the corrugated container industry is highly competitive (F. 16). To keep business, or obtain new customers or additional business from existing customers, suppliers must meet a competitive price (F. 25). Some purchasers do not accept the lowest initial quotation, but allow other manufacturers to meet or beat it (F. 28). The order will then be divided among manufacturers meeting the lowest bid

⁵ Purchasers do not carry these containers in their inventories nor enter into long term requirements contracts with a supplier (F. 14).

(F. 28). It is the practice in the industry for each purchaser to buy from two or more suppliers concurrently (F. 24). Each defendant faced price competition in the sale of containers, although not necessarily from all other defendants, at all times, in all areas or for all purchasers. (F. 68, 84, 94, 106, 116, 129, 145, 155, 182, 196, 207, 221, 237, 250, 261, 274, 288.) The number of defendants actually competing for the business of a particular customer was limited to those with plants located within economic shipping distance (CX4, p. 164; CX5, pp. 337, 403; CX6, p. 458).

Purchasers were free to and did shift all or part of their business from one supplier to another (F. 17). Each defendant annually lost a substantial number of customers that it had the year before and gained many it had not had (F. 17). Each defendant also had continuing and substantial losses and gains in its sales to particular customers (F. 17).

C. EXCHANGE OF PRICE INFORMATION AMONG DEFENDANTS

When a defendant wished to submit a quotation for a particular order, he would first attempt to ascertain the price alternatives available to the purchaser (App. A, *infra*, pp. 109-110, F. 19, 27).⁶ This information might be obtained from his own records of prior sales—if he was currently supplying the customer with boxes of the same type—or from the customer if the latter was willing to furnish it to him (F. 29). However, since a defendant's own records did not al-

⁶ This information was particularly important to a defendant when there had been a general price increase in the industry and he wanted to know whether his competitors had increased their price quotations to a particular customer (F. 187, 312).

ways contain such information, and since on occasion customers refused to furnish it or furnished inaccurate or misleading information (F. 30), there were times when the last price offered a specific customer could be ascertained only by asking a defendant's competitor. To meet this need, defendants had a regular practice of requesting and obtaining from each other the most recent price offered a specific customer whenever defendants believed that they needed such information from that source. (F. 69, 85, 95, 107, 117, 130, 146, 162, 183, 197, 208, 222, 238, 251, 262, 275, 298.) Although it might be supplied in different forms (F. 55),⁷ this information would always reveal either the most recent price charged a specific customer in an actual sale or the price most recently quoted (F. 29).

The court found that each defendant made an independent decision whether to request or furnish price information (F. 35), and that the extent and frequency with which such information was requested or furnished varied from defendant to defendant, from plant to plant, and from customer to customer (F. 32). Although there was no express agreement for the exchange of such information (F. 33), each de-

⁷ Defendants used published manuals, containing formulas into which could be put the price being quoted for container board of a specific type ("board level") and for setting up the machinery to make containers of certain specifications (the "set-up charge") in order to derive the actual prices charged ("end prices") on various types of containers contained in one order (F. 46, 52). The most recent price offered to a specific customer was usually furnished to competitors in terms of the end price for the manufactured containers if only a few different types were involved in an order, and in terms of board levels if more than a few were involved (F. 55).

fendant normally furnished it upon request from another defendant, with the implied understanding that in the future it could similarly obtain like information.* (App. A, *infra*, p. 109.)

D. THE DEFENDANTS' USE OF PRICE INFORMATION

A defendant regularly supplying a customer with corrugated containers would usually quote the same prices on additional orders from that customer as its previous prices, unless there had been a change in production costs, specifications and volume requirements, or competitive conditions (F. 23). Similarly, when a defendant acquired, from whatever source, reliable information as to the price being quoted by its competitors to a specific customer, in the majority of instances it would quote substantially the same price.*

*The court specifically found that price information was given by six defendants in the belief or hope that if they did so, they would receive such information when they requested it (F. 151(f), 190, 215, 230, 270, 296), and when four defendants stopped requesting such information, they also stopped furnishing such information (F. 71, 167, 186, 262).

*In determining whether to seek a particular order at a particular time and at what price, each defendant considered several factors, including its own manufacturing costs and anticipated profit, the desirability of the business in view of its production situation at that time, its last price to the customer, and the prices offered by competitors (F. 22). Sometimes a defendant's calculations would work out so that he would not want the business at the price offered by his competitors and he would reject the business by quoting a higher price (F. 28). In a majority of instances, after making these calculations he would quote the same price as his competitors (F. 28). After receiving price information from his competitor, a defendant would occasionally cut prices if he felt that such a cut was necessary for him to receive the amount of a particular order needed at that time (F. 37).

(F. 28) If it decided to quote a lower price in order to try to obtain a larger share of the business, as was occasionally the case (F. 37), knowledge of its competitors' prices enabled it to avoid going as low as it might be willing (CX-4, pp. 123-129). The result was the protection of the industry price structure from unduly low prices which might "demoralize" the market (CX-5, 323-325). According to the stipulated evidence, defendants "felt that such price information [as to competitors' prices] was needed to maintain prices and minimize any price competition that might otherwise exist." (App. A, *infra*, p. 112; see also CX-6, pp. 475, 585, CX-7, pp. 755, 774-5, PX-47, F. 139, 151(e), 317, 321.)

E. THE TRADE ASSOCIATION AND MEETINGS OF COMPETITORS

All but three of the defendants belonged to the Fibre Box Association, a nation-wide trade association (F. 61) whose statistical program furnished to defendants monthly the overall industry price trends computed from total industry sales, and weekly an analyzed price trend, computed from sales of more standard containers (F. 63). Each association member was also furnished with his own individual price trend (F. 63).

During this period, there were various meetings of some defendants at which firms would announce price increases to their competitors (F. 302, 305, 312, 313), try to determine if competitors would go along with price increases (F. 313, 316, 319, 320), and discuss generally such competitive problems as how price increases were holding or how they could compete with outside manufacturers (F. 303, 306, 312, 321, 323).

There were no agreements made at the meetings that all would go along with one defendant's price increases (App. A, *infra*, p. 112).

F. THE 1940 CONSENT DECREE

In 1940 a consent decree was entered against Container Corporation, Inland Container Corporation and the predecessors of seven other defendants in this case (F. 40). It provided that the defendants and their successors would not limit production, fix quotas, or fix or maintain prices for corrugated or solid fibre containers. However, the decree specifically does not prevent the defendants from "gathering, auditing and disseminating information as to * * * the actual price (or base price derived from actual price) which the product has brought in past transactions * * *" or deny them the right "to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors" as long as there is no agreement or concerted action as to prices (F. 44).

3. THE DISTRICT COURT'S DECISION.

The district court held that the government had not proved either the existence of an agreement among defendants to exchange information as to the most recent price charged or quoted to specific customers, or that such an agreement would have the purpose and effect of minimizing price competition.¹⁰

The court concluded that, although each defendant, on request, furnished to each other defendant the

¹⁰ The court rejected as irrelevant the defendants' claim that their conduct was permitted under the 1940 consent decree.

most recent price charged or quoted a particular customer on the "implied understanding" that he would thereby receive such information, on request, at some later date (App. A, *infra*, p. 109), there was no express agreement or understanding to exchange such information (App. A, *infra*, p. 109). In finding no agreement, the court relied on its conclusions that (1) despite this "implied understanding," the decisions to give or not give and to request or not request such information were the individual decisions of each defendant (App. A, *infra*, p. 110); (2) defendants usually, although not always, furnished the price information on request, and on various occasions during the period covered by this complaint, some defendants stopped requesting and furnishing such information altogether (App. A, *infra*, p. 110); (3) price information was requested and furnished to competitors infrequently because defendants could usually get such information from their own records or from customers (App. A, *infra*, pp. 109-110); and (4) no uniformity existed as to the substance and scope of the price information given (App. A, *infra*, p. 110). The court concluded that the most the government had proved was a "course of conduct by the defendants, or parallel business behavior" which under *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, does not require an inference of a conspiracy (App. A, *infra*, pp. 110-111).

The court further held that even if there was an agreement to exchange price information, there was no "common scheme" to fix prices. (App. A, *infra*, p. 112). This conclusion was based on the findings that

(1) there was substantial shifting of accounts among defendants (App. A, *infra*, p. 113); (2) each defendant exercised its own independent judgment in determining the price to quote and the desirability of the business (App. A, *infra*, p. 113); (3) many factors other than the price charged or quoted by a competitor went into decisions regarding the desirability of the order and the price to quote (App. A, *infra*, p. 113); and (4) this industry is highly competitive. The court concluded that the exchange of such information merely gave the recipient the ability to compete on a basis of fuller price information (App. A, *infra*, p. 113).

Nor, in the court's view, did the arrangement have the effect of restricting price competition (App. A, *infra*, p. 114). The court viewed as indistinguishable the effect on prices of receiving price information from competitors and from a defendant's own records or customers, a practice admittedly legal (App. A, *infra*, p. 115). The court also noted that there was no uniformity or harmony among defendants or plants as to the velocity or direction of individual price trends (App. A, *infra*, p. 114); and that there was no evidence from customers indicating that prices charged were stabilized or harmonized by the exchange of price information (App. A, *infra*, p. 114).

THE QUESTIONS ARE SUBSTANTIAL

This case involves a concerted course of conduct by defendants to moderate the vigor of price competition in the corrugated container industry. Defendants did not agree to fix identical prices or to allocate business

among themselves—practices expressly forbidden by the 1940 consent decree. Indeed, there was substantial movement by customers among defendants on the basis of better price offers. The effect of the exchange of price information among defendants, however, was to eliminate that element of uncertainty, caused by the necessity of making sales on a special order basis, that can undermine the uniform pricing normally found in markets made up of relatively few sellers, and thus to reduce price competition. Such concerted interference with the normal competitive forces that determine prices violates Section 1 of the Sherman Act. *United States v. General Motors Corp.*, 384 U.S. 127, 147-148; *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224, n. 59.

If a company submitting a bid for a customer's requirements had only a general idea of the current prices in the industry—i.e., the type of information provided by trade association compilations of prices in past transactions—it would presumably tend to submit the lowest price at which the business would be profitable for it—i.e., a true "competitive" price. However, with knowledge of the prices being quoted by its competitors, it had the more attractive options of bidding the same price, in the hope of sharing the business, or a price only slightly lower if it hoped to get a larger share.

On request, each defendant would give to another defendant its most recent price quoted to a specific customer. This might be the price actually charged—and therefore, according to industry practice, the probable price which would be quoted on any new

order—or it might be a more recent price quoted the customer. In whatever form it was given, however, generally it effectively informed the defendant receiving the information of its competitors' current price.

On the basis of past experience, the defendant supplying the price knew that the defendant making the request would probably quote the same price to the customer in question. The fact that the requesting defendant might occasionally use the information to undercut did not remove the incentive to supply the information. Since such cuts were slight and occasional, they could be tolerated in exchange for the receipt of similar information when needed and for the continuation of an artificially high price structure for the industry as a whole.

1. THE DISTRICT COURT APPLIED AN ERRONEOUS STANDARD IN HOLDING THAT THERE WAS NO AGREEMENT AMONG COMPETITORS

The court recognized that an explicit agreement is not a necessary element of a Sherman Act violation (App. A, *infra*, pp. 108–109). However, the court in fact applied just that standard when it concluded that there was no agreement even though the defendants furnished each other, on request, the most recent price charged or quoted with the “implied understanding” that by furnishing such information, each would in the future receive such information on request (App. A, *infra*, p. 109). But proof of reciprocal, interdependent action by defendants, as is established by the court's conclusion as to their “implied understanding,”

is plainly sufficient to show an agreement among defendants so to act. See *Interstate Circuit v. United States*, 306 U.S. 208.

The district court, in refusing to infer such an agreement, erroneously relied on *Theatre Enterprises v. Paramount Film Distributing Corp.*, 346 U.S. 537, where this Court upheld a jury verdict for the defendants in a private antitrust suit. This Court there held that a bare showing of parallel business practices did not necessarily show agreement. But the evidence was that each individual defendant, acting independently, could maximize his profits by engaging in the practice challenged regardless of what business decisions his competitors made. Because independent self-interest could explain the defendants' behavior, the trier was not required to infer an agreement among defendants to act in the same way.

In the present case, by contrast, it would be completely irrational for a defendant to give its competitors information, repeatedly and over a long period of time, that could be used by such competitors to take business away from it unless, at the very least, it were understood that the competitors were obliged to repay the favor in kind. Indeed, the court concluded that there was such reciprocal conduct. "By receiving such information [each defendant] felt compelled to give similar information upon request" (App. A, *infra*, p. 111). The so-called "individual" decisions were, in short, interdependent with compara-

ble decisions being made by the other defendants. This constitutes "agreement."¹¹

Moreover, in *Theatre Enterprises* the challenged conduct did not in itself involve any collaboration between two or more of the alleged co-conspirators. By contrast, the present case is *not* one of consciously parallel *individual* conduct among alleged co-conspirators. Two defendants—the one requesting the information and the one furnishing it—participated in each challenged transaction; and cumulatively these

¹¹ The complaint charged that "the defendants have engaged in a combination and conspiracy * * * [which] has consisted of a continuing agreement, understanding, and concert of action among the defendants to exchange among themselves information respecting prices they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers" (Complaint pp. 10-11). The district court stated that the government "concedes that if it had only charged in the Complaint that the defendants had agreed to exchange price information, it would have no case, and that the Complaint would be subject to dismissal." (App. A, *infra*, p. 111). From this it inferred that the government undertook the burden of showing not only an agreement to exchange price information, but also a further agreement as to the use that would be made of such information (App. A, *infra*, p. 111). But the government never suggested that its case required more than a showing that *the agreement to exchange price information* had the purpose and necessary effect of restricting price competition. During the colloquy with the district judge which constituted the alleged concession, the government's trial attorney stated: "*The Government contends that this system—this system, this understanding, this common practice of doing this inevitably leads to a restriction of competition with respect to those customers for which the past market is requested*" (Tr. p. 39, emphasis added). Indeed, the teaching of this Court is that inquiry into effect is unnecessary if there is a concerted undertaking by competitors to tamper with prices. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224, n. 59.

transactions add up to exchanges of price information among the various defendants. If agreement to perform certain acts would be a violation of Section 1 of the Sherman Act, the concerted performance of those acts is *a fortiori* a violation. "Agreement" or "combination" is inherent in the concerted performance. In reversing a holding by a district court similar to the present one on this point, this Court said, "conspiracy arises implicitly from the course of dealing of the parties." *United States v. Singer Manufacturing Co.*, 374 U.S. 174, 194, 192-195. Accord, *United States v. Parke, Davis & Co.*, 362 U.S. 29, 43-45.

The court's conclusions that the exchange of information was infrequent and that the extent and frequency with which price information was requested and furnished varied from plant to plant and from customer to customer (App. A, *infra*, pp. 109-110) are both, without significance. Although the government disagrees that the exchanges were "infrequent",¹² even if they were, this would neither negate

¹² The uncontested testimony of seven pricing officials of seven defendants establishes that this practice was "well established", "common" and "not unusual". (CX-4, p. 116, CX-4, pp. 131-2, CX pp. 171, CX-5, p. 387, CX-6, pp. 425-6, CX-7, p. 662, CX-5, pp. 246-8, CX, p. 174.) The court's erroneous conclusion as to the frequency of these communications was apparently based on the finding that price information was usually obtained from defendants' own records or customers (F. 29) and on the finding that price communications of one defendant, International Paper Company, ranged from 2 to 3 per month to 2 to 3 per day (F. 158). Neither of these findings supports the conclusion that over-all, the exchange was infrequent. Moreover, the very fact that price information was available, when needed, from a defendant's competitors undoubtedly made customers more willing to supply such information on request.

the necessary inference of agreement from defendants' conduct nor accurately measure the impact of the agreement. To be sure, a defendant frequently could itself determine the price being quoted by its competitors—either on the basis of its own prior sales (which it knew ordinarily were at the same price as those of its competitors), or by asking the customer (see *supra*, pp. 6, 11). But on new business or when new competitors appeared, if the customer refused to disclose the bids it had received, a defendant's only recourse would be to get the information from its competitors. The court itself found that the practice of exchanging price information was invoked by each defendant whenever it believed it necessary, *i.e.*, whenever such information was not available from its own records or from customers seeking the bid. Thus, the extent and frequency of such exchanges varied because competition for new business, and the cooperativeness of customers, varied.

But the situations in which competition was moderated by the exchange of price information were precisely the ones that opened the possibility of price reductions and hence were the most significant. The fact that information was exchanged only when needed to stabilize prices plainly does not mean that there was no agreement to exchange such information. Moreover, the existence of the arrangement—which fulfilled informational gaps in critical competitive situations—undoubtedly minimized the number of situations in which buyers would refuse to reveal competing bids or would give misinformation.

The court's conclusion that there was a lack of uniformity as to the price information furnished (App. A, *infra*, p. 110) is misleading. Although the most recent price charged or quoted a specific customer was sometimes in terms of board levels (F. 55), each defendant had available manuals with which it could compute the end prices of different types of containers once ~~it~~ knew the board levels and set up charges (F. 46, 52). Nor is it significant that sometimes the information related not to the last sale but to the last quotation. Because of the general practice of charging the same customer on the same basis over a substantial time unless there were a change in market conditions (F. 23), a defendant usually could determine his competitor's current price to a customer from the most recent price that competitor had actually charged that customer. Sometimes, however, when the most recent price *quoted* a particular customer was different from the most recent price charged, a defendant gave the former information (CX-4, p. 69; CX-5, pp. 340-2; CX-5, pp. 278-81; CX-7, p. 759; CX-6, pp. 428-9; CX-4, pp. 97-8; CX-6, pp. 528-31). Thus, in whatever form the price information was given, it usually was provided in a manner which enabled the recipient to determine the current price being quoted to the customer—as is further shown by the fact that a defendant, on receiving price information from his competitor, usually quoted the same price to the customer involved (F. 29).

2. THE RECIPROCAL EXCHANGE OF PRICE INFORMATION AMONG THE DEFENDANTS VIOLATED SECTION 1 OF THE SHERMAN ACT

The district court further found that the exchange of price information did not have the illegal purpose or effect of restraining competition among the appellees. In the court's view, "cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices" is not illegal so long as the decision whether to bid on a particular order, and the price quoted, is "the individual decision of each defendant." (App. A, *infra*, p. 113.) But the prohibition in Section 1 of the Sherman Act against price fixing is not limited to agreements that directly establish the prices to be charged; the Act also forbids agreements creating market conditions that limit the vigor of price competition. See *United States v. General Motors Corp.*, 384 U.S. 127, 147-148; *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 224, n. 59.

This is precisely the situation involved here. Once a defendant had ascertained the prices which its competitors were likely to quote, or had already quoted, on a particular order, it no longer had an incentive to bid the lowest price which would return a profit on the business. Instead, it had the more attractive options of quoting the same price, if it wanted to share the business, or a price only slightly lower if it wanted a larger share. Although the prices ultimately quoted reflected the individual decisions of each defendant, these decisions inevitably were influenced by the defendants' awareness of each other's most recent price quotations; and the neces-

sary tendency was to stabilize industry price levels to some extent, to the obvious detriment of competition.

Uncontradicted testimony of defendants' employees demonstrated that they were well aware of the inevitable effect of their exchange of price information and that, indeed, the purpose of this exchange was to stabilize industry prices and to minimize price competition. (PX-47, CX-5, pp. 323-4, CX-6, p. 475, CX-4, pp. 123-4, CX-6, p. 585, CX-7, pp. 755, 774-5. See also F. 151(e), 139, 317, 321. See also App. A, *infra*, p. 112.)

In one witness's words, the exchange served to prevent "destructive" practices which would "demoralize" the market (CX-5, pp. 323-325); another testified that by giving information he prevented his competitor from cutting too low (CX-6, p. 475); a third said that the exchange enabled him to avoid going as low as he was willing (CX-4, pp. 123-129).

This uncontradicted testimony merely confirms what normally would be expected from the exchange of such information in a market of the kind involved in this case. In a perfectly competitive market, with large numbers of sellers competing on all sales, it may indeed be that the general dissemination of the price quotations of all sellers could not significantly interfere with the establishment of a competitive price unless there were, in addition, an actual price-fixing agreement of the plainest sort. In such a market, it may be reasonable to suppose that the purpose of circulating such information may simply be to facilitate the setting of a competitive price. But that does not describe the Southeastern corrugated con-

tainer market—a market dominated by 18 producers; where even fewer may bid on any particular order; and where bids are requested by purchasers with inelastic demands (i.e., with firm requirements that must be purchased from some one now, and virtually without regard to price).

Here, as the uncontradicted testimony confirms, the competing sellers not only have every incentive to moderate the price competition among them, but they are also sufficiently few that their mutual willingness to convey pertinent price information on pending transactions may be expected to have precisely that result.

The very fact that buyers from time to time refuse to convey to a particular bidder the quotation received from another is perhaps the clearest indication of the consequences of the agreement. Buyers may confidently be expected to pursue a course of action most likely to produce for them the lowest possible price. Their refusal to supply such information can only reflect their judgment that to do so would simply lead to a matching of price quotations by all or most bidders (which was characteristic) or in any event to a winning bid much closer to higher quotations than they would otherwise obtain. Buyers confronting competing sellers whom they expect to compete vigorously for their business may well gain from notifying the competitors of the lowest bid received so far, contemplating that further competition will drive the price down. It is only in the situation where buyers contemplate that such price information will tend to eliminate or substantially reduce any further

competition that they will decline to disclose it. The agreement here frustrated this effort of the buyers to induce truly competitive bidding and helped stabilize prices.

Reports as to sales to particular customers by particular competitors make discovery of price reductions inevitable and immediate, thus discouraging such reductions. The tendency of the exchange of such information necessarily is so anticompetitive that this Court has twice condemned it. *American Column and Lumber Co. v. United States*, 257 U.S. 377; *United States v. American Linseed Oil Co.*, 262 U.S. 371. Both cases involved agreements for the exchange by sellers of information as to specific offers to specific customers; neither involved any agreement directly fixing prices. The Court nevertheless held that because of the disposition of the participants to follow their competitors' prices in order to maximize profits, the exchange of information was illegal. Although the present case does not involve the elaborate mechanisms used in *American Column* and *American Linseed* to insure the operation of the arrangement, the basic vice is the same in all three cases: a reduction of price competition through concerted action of competitors.

Neither *Maple Flooring Mfgs. Assn. v. United States*, 268 U.S. 563, nor *Cement Mfgs. Protective Assn. v. United States*, 268 U.S. 588, upon which the district court relied, sanctions the exchange of price information involved here. *Maple Flooring* upheld the dissemination by a trade association of general price and market information based on reports to the asso-

ciation concerning past transactions. Unlike the present case, it did not involve current price quotations to particular customers.¹¹ *Cement* upheld an agreement to exchange information as to specific offers by competitors—the only decision in which this Court has done so—but the case turned primarily upon the special facts of the cement industry. Because of the way cement was sold to contractors, cement manufacturers who did not know about specific offers to specific customers during periods of rising prices might deliver more cement, at below market prices, than they were required to under their contracts. The Court held that in those circumstances the collection and dissemination of such price information was not illegal because it provided cement manufacturers with information necessary for the assertion of their legal rights. No similar considerations exist in the Southeast corrugated container industry to justify the exchange of price information there.

The district court's emphasis on the fact that the arrangement here did not eliminate all price competition in the industry is irrelevant. It is true that a defendant sometimes quoted a lower price than its competitors and that purchasers shifted their business among competitors on the basis of better price offers (F. 17; App. A, *infra*) p. 113). It is also true that

¹¹ The district court in the present case apparently ignored the amount and frequency of information exchanged by the defendants through their trade association when it concluded that the exchange of information here was less frequent and detailed than in *Maple Flooring*.

prices trended down during this period (F. 15; App. A, *infra*, p. 114).¹⁴ Our contention, however, is not that the arrangement eliminated all price competition in this industry, but that it plainly operated to limit and reduce it, a purpose and effect equally unlawful. See *United States v. General Motors Corp.*, 384 U.S. 127, 147-148; *United States v. Socony-Vacuum Oil Co.*, 310, U.S. 450, 224, n. 59.

CONCLUSION

This appeal presents substantial issues in the enforcement of the anti-trust laws. Probable jurisdiction should be noted.

Respectfully submitted.

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JANUARY 1968.

¹⁴ This does not mean that the price of corrugated containers may not have been above a competitive level. The court found that there was excess capacity in every year throughout the period covered by the complaint (F. 12). Yet throughout this same period, the number of plants doubled and the number of manufacturers increased from 30 to 51 (F. 9).

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The process of urbanization is the movement of people from rural areas to urban areas. This movement is caused by a number of factors, including the search for better living conditions, the desire for education, and the need for employment. The process of urbanization has led to the growth of large cities and the decline of small towns. This has had a significant impact on the economy and society. The majority of the population now lives in urban areas, which are characterized by high population density, a high level of economic activity, and a high level of social organization. This has led to the development of a new type of society, which is based on the city. The city is now the center of economic and social life. The majority of the population now lives in urban areas, which are characterized by high population density, a high level of economic activity, and a high level of social organization. This has led to the development of a new type of society, which is based on the city. The city is now the center of economic and social life.

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This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf from an old book. The paper has a slightly textured appearance with visible dust specks and a small, dark, irregular stain near the center. There is no text or other markings on the page.

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APPENDIX A

**In the United States District Court for the Middle
District of North Carolina, Greensboro Division**

No. C-180-G-63

UNITED STATES OF AMERICA, PLAINTIFF

v.

**CONTAINER CORPORATION OF AMERICA; ALBEMARLE
PAPER MANUFACTURING COMPANY; CAROLINA CON-
TAINER COMPANY; CONTINENTAL CAN COMPANY,
INC.; CROWN ZELLERBACH CORPORATION; DIXIE CON-
TAINER CORPORATION; DIXIE CONTAINER CORPORA-
TION OF NORTH CAROLINA; INLAND CONTAINER
CORPORATION; INTERNATIONAL PAPER COMPANY; THE
MEAD CORPORATION; MILLER CONTAINER CORPORA-
TION; OWENS-ILLINOIS GLASS COMPANY; ST. JOE
PAPER COMPANY; ST. REGIS PAPER COMPANY; TRI-
STATE CONTAINER CORPORATION; UNION BAG-CAMP
PAPER CORPORATION; WEST VIRGINIA PULP AND
PAPER COMPANY; AND WEYERHAEUSER COMPANY,
DEFENDANTS**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STANLEY, Chief Judge: The plaintiff, United States of America, seeks by this civil action to prevent and restrain an alleged violation of Section 1 of the Sherman Act (15 U.S.C. § 1). Briefly summarized, the complaint charges that "the defendants have engaged in a combination and conspiracy in unreasonable re-

straint of . . . interstate trade and commerce in corrugated containers, in the Southeastern United States, in violation of Section 1 of the Sherman Act"; that the "combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants to, exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers"; that for "the purpose of effectuating the . . . combination and conspiracy the defendants have done those things which . . . they combined and conspired to do"; and that the "combination and conspiracy has had the effect, among others, of unreasonably restricting price competition in the sale of corrugated containers to purchasers located in the Southeastern United States."

Each defendant timely filed answer denying, in all material respects, the allegations of the complaint. Additionally, defenses are raised based on the provisions of a consent decree approved and entered on April 23, 1940, by the United States District Court for the Southern District of New York, in the action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" (Civil Action No. 8-318).

The case was tried by the Court without a jury. The commendable cooperation of counsel for the plaintiff and for all of the defendants in streamlining both discovery procedures and the presentation of evidence at the trial, resulted in many of the facts, including documents and other exhibits, being stipulated. Appreciation is again expressed to all counsel for their efforts and accomplishments in this regard.

The Court, after giving due consideration to the

pleadings and the evidence, including exhibits and stipulations, the requests and briefs submitted by the parties, and the oral arguments of counsel, now makes and files herein its Findings of Fact and Conclusions of Law, separately stated:

FINDINGS OF FACT

I. GENERAL FINDINGS

1. Jurisdiction of the subject matter duly appears; and proper venue of the defendants is not contested.
2. For purposes of brevity, the defendants are referred to herein by the following abbreviated names:

Container Corporation of America	Container Corporation.
Albemarle Paper Manufacturing Company	Albemarle.
Carolina Container Company	Carolina.
Continental Can Company, Inc.	Continental.
Crown Zellerbach Corporation	Crown Zellerbach.
Dixie Container Corporation	Dixie.
Dixie Container Corporation of North Carolina	Dixie of North Carolina.
Inland Container Corporation	Inland.
International Paper Company	International.
The Mead Corporation	Mead.
Miller Container Corporation	Miller.
Owens-Illinois Glass Company	Owens-Illinois.
St. Joe Paper Company	St. Joe.
St. Regis Paper Company	St. Regis.
Tri-State Container Corporation	Tri-State.
Union Bag-Camp Paper Corporation	Union-Camp.
West Virginia Pulp and Paper Company	West Virginia.
Weyerhaeuser Company	Weyerhaeuser.

3. Except as otherwise stated or required by context, the facts herein found occurred or existed within the period from January 1, 1955, to October 14, 1963 (hereinafter referred to as the "period covered by the Complaint"), and within, and are limited to the Southeastern United States (herein defined as the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee and Kentucky).

4. Each defendant engaged in the manufacturing and selling of corrugated containers in the regular

course of its business, except that the following defendants were not engaged in the corrugated container business in the Southeastern United States prior to the date set forth opposite their respective names:

Albemarle	September 9, 1959.
Continental	October 28, 1958.
Crown Zellerbach	November 30, 1955.
Dixie of North Carolina	March 1, 1959.
Mead	December 27, 1956.
Owens-Illinois	October 4, 1958.
St. Regis	October 2, 1958.
West Virginia	September 30, 1957 (except through its subsidiary Hinde & Dauch).
Weyerhaeuser	May 1, 1957.

5. Most of the corrugated containers sold by each of the defendants in the regular course of its business were manufactured by it upon customer order, and in accordance with the specifications prepared by or for the particular customer so ordering, as to the style, dimensions, weight, strength, color, printing, type of joint, and other physical characteristics, and, unless otherwise expressly designated, whenever corrugated containers are referred to herein they are of the character described in this Finding.

6. The basic material used in the manufacture of corrugated containers is corrugated containerboard consisting of one or more sheets of a corrugated material sandwiched between two or more sheets of linerboard.

7. Each defendant, in the regular course of its business, has sold and shipped substantial quantities of corrugated containers to customers located in states other than the states in which said corrugated containers were manufactured.

II. THE INDUSTRY

8. Aggregate dollar sales of corrugated containers for all defendants for each year since, and including, 1961 were in excess of \$100 million per year. At the time of the filing of the Complaint herein, the aggregate shipments of corrugated containers of all defendants from plants in the Southeastern United States represented approximately ninety per cent (90%) of total shipments of corrugated containers from all plants in the Southeastern United States.

9. During the period covered by the Complaint, there has been growth and expansion of the corrugated container industry in the Southeastern United States. From an industry comprised in 1955 of 30 manufacturers having a total of 49 corrugated container manufacturing plants, it has grown to an industry comprised in 1963 of 51 manufacturers having a total of 98 such plants. In January of 1955, the beginning of the period covered by the Complaint, 9 of the 18 defendants, and 21 non-defendants, were engaged in the corrugated container business in the Southeastern United States. In 1963, the end of the period covered by the Complaint, there were a total of 18 defendant and 33 non-defendant corrugated container manufacturers in the Southeastern United States. During the same period, shipments of corrugated containers from plants located in the Southeastern United States increased from slightly over 9 billion square feet in 1955 to almost 16 billion square feet in 1963. The growth and expansion is illustrated by the following statistics showing the number of such

plants in the Southeastern United States and the volume of shipments therefrom:

Year	Total	Number of Plants		Shipments of Corrugated Containers (Millions of Sq. Ft.)
		Defendants	Others	
1955.....	49	18	31	9,077
1956.....	56	21	35	9,659
1957.....	59	30	29	10,028
1958.....	67	36	31	10,400
1959.....	71	43	28	12,328
1960.....	76	46	30	12,266
1961.....	81	53	28	13,481
1962.....	85	55	30	14,831
1963.....	98	58	40	15,846

10. In 1963, there were more than 10,000 purchasers of corrugated containers in the Southeastern United States and, in addition, several thousand potential purchasers of such containers. In that year, the defendants employed in the aggregate more than 411 sales personnel to sell their corrugated containers who, in the course of their sales activity in behalf of their respective companies, each business day made on the average 4 or 5 calls each on purchasers or potential purchasers. In October, 1963, the defendants had the following number of sales personnel regularly soliciting corrugated container business in the Southeastern United States:

Company	Number	Company	Number
Container Corporation.....	57	Mead.....	26
Albemarle.....	9	Miller.....	7
Carolina.....	15	Owens-Illinois.....	59
Continental.....	20	St. Joe.....	12
Crown Zellerbach.....	27	St. Regis.....	23
Dixie.....	12	Tri-State.....	5
Dixie of North Carolina.....	3	Union-Camp.....	36
Inland.....	24	West Virginia.....	17
International.....	23	Weyerhaeuser.....	36

11. Throughout the period covered by the complaint, there has been an ample supply of raw materials

available from competitors and from others for manufacturing corrugated containers. Necessary machinery and equipment has been available from numerous suppliers. Initial investment for a corrugated container manufacturing facility is relatively low, approximating as little as \$50,000 to \$75,000 for a minimum size viable enterprise.

12. The capacity to supply all purchasers of corrugated containers in the Southeastern United States has exceeded in each of the years from 1955 through 1963 the demand of purchasers for such containers.

13. The costs of manufacturing corrugated containers vary from plant to plant, and for each plant manufacturing corrugated containers unit costs vary with the ratio between that plant's production and capacity. Generally, each order which increases a plant's ratio of production to its capacity represents an increasing profit or diminishing loss for it. Each plant attempts to obtain orders to enable it to operate at all times at as favorable a ratio of production to its capacity as possible.

14. The demand for corrugated containers is determined by the volume of sales of the wide variety of disparate products manufactured and sold by the many thousands of purchasers of corrugated containers. Purchasers do not buy corrugated containers except as they need them for shipping their products, and do not build up inventories of such containers. Purchasers of corrugated containers do not enter into long term commitments for their requirements. Purchasing is done generally on a spot or short term basis covering a purchaser's immediate or near term requirements.

15. During the period covered by the Complaint, the trend of corrugated container prices was downward, and while containerboard prices fluctuated dur-

ing the period they were substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices during the same period for paper and allied products generally, and for all other commodities, excluding farm and food. During the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased.

III. NATURE AND EXTENT OF COMPETITION; EFFECT OF PRICE COMMUNICATION

16. Throughout the period covered by the Complaint, the corrugated container industry was and is highly competitive, and each defendant engaged in and was faced with price competition in the sale of corrugated containers; and the parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would so testify.

17. Throughout the period covered by the Complaint, every purchaser of corrugated containers had numerous alternate sources of supply, both actual and potential. Such purchasers were free to shift all or a part of their business from one supplier to another and they frequently did so. Although such purchasers generally did not make such shifts unless offered a lower price by another supplier, each defendant repeatedly lost customers and obtained new ones, and continuously had substantial losses and gains in its sales to particular customers. Tables 1 and 2 annexed to DX-1, and the Charts on pages 21 through 24 of DX-6, reflect business lost and gained from one year to the next for the period 1960-1962. The figures shown in said Tables and Charts are representative for each defendant of the entire period covered by the Complaint.

18. The following examples from Tables and Charts referred to in the preceding paragraph are typical of the extent of gains and losses in customers and in sales to particular customers experienced by each of the defendants throughout the period covered by the Complaint:

(a) In 1960, Container Corporation's plants in the Southeastern United States made sales of corrugated containers to a total of 3,132 accounts. Of these, 1,209 accounts, representing over 38% of all of the accounts sold by Container Corporation during that year, were new accounts; i.e., accounts which had bought nothing from any of Container Corporation's plants in the Southeastern United States during the preceding year. In addition, Container Corporation's sales during that year to another 488 of those accounts, representing over 15% of the total, amounted to more than 150% of its preceding year's sales to each of such accounts. Moreover, of the 3,132 accounts sold in 1960 a total of 1,210 (over 38%) were totally lost by Container Corporation in 1961, and its sales in 1961 to another 343 of these accounts (over 19% thereof) were less than 50% of its preceding year's sales to each of such accounts. Not only was a large percentage of Container Corporation's total Southeastern United States accounts involved in such gains and losses but the dollar volume of its sales to such accounts was also very substantial, accounting for over \$14,300,000 out of total sales of about \$29,400,000, or more than 48% of Container Corporation's total corrugated container sales from plants in the Southeastern United States.

(b) In 1960, Albemarle's plant at Richmond, Virginia, sold a total of 291 accounts. Of these, 92 (over 31%) were new accounts. Albemarle's sales in 1960 to another 49 accounts (over 16% of Albemarle's total accounts) amounted to over

150% of its preceding year's sales to each of such accounts. Of the 219 accounts sold by Albemarle in 1960, 96 (approximately 33%) were totally lost by it in 1961, and its 1961 sales to another 50 of these accounts (over 17%) were less than 50% of its preceding year's sales to each of such accounts. The dollar volume of Albemarle's 1960 sales to the accounts involved in such gains and losses amounted to almost \$1,200,000, or more than 67% of its total 1960 corrugated container sales of less than \$1,800,000.

(c) In 1960, Owens-Illinois' plants at Atlanta, Georgia, Jacksonville, Florida, Miami, Florida, and Salisbury, North Carolina, sold a total of 2,527 accounts. Of these, 908 (over 35%) were new accounts. Owens-Illinois' 1960 sales to another 381 accounts (over 15% of total 1960 accounts) exceeded 150% of its preceding year's sales to each of such accounts. Of the 2,527 accounts sold in 1960, 941 (over 37%) were lost by Owens-Illinois in 1961, and its 1961 sales to another 268 of these accounts (over 10%) decreased to less than 50% of its 1960 sales to each of such accounts. The dollar volume of Owens-Illinois' 1960 sales to the accounts involved in such gains and losses amounted to almost \$8,900,000, or more than 62% of its total 1960 corrugated sales from the above plants of less than \$14,300,000.

19. The record includes over 1,000 documents from the defendants' files. These documents are contemporaneous business records, most of which relate to specific purchasers, prepared by employees directly engaged in the sale of corrugated containers. They constitute a sampling from defendants' files, and tend to portray independent and unrestricted price competition by each of the defendants. This sampling relates to hundreds of purchasers of corrugated containers and to thousands of transactions with such

purchasers. Among other things, these documents establish that during the period covered by the Complaint:

(a) In order for a supplier or prospective supplier to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser.

(b) Purchasers usually informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices.

(c) Purchasers often informed suppliers and prospective suppliers as to the particular prices which must be met or beat in order to obtain or retain business.

(d) Upon obtaining such price information, suppliers and prospective suppliers often reduced their prices.

(e) Absent such price information, a supplier or prospective supplier often quoted prices higher than those recently charged or quoted by other suppliers.

(f) Each defendant often encountered situations in which the prices most recently charged or quoted by it were cut by other defendants, and responded to such price cutting by meeting or beating the prices quoted by such other defendants.

(g) Each of the defendants endeavored to obtain additional sales by cutting the prices which other defendants had most recently charged or quoted to their customers or prospective customers.

20. Plaintiff was furnished listings showing the name and address of every corrugated container customer in the Southeastern United States of each of the defendants, aggregating more than 10,000 such customers. No evidence was adduced by plaintiff from

any of such *customers* showing or in any way indicating that the prices charged by any one or more of the defendants were stabilized or harmonized by the requesting or furnishing of price information by or between any of the defendants, or showing or in any way indicating that the prices charged or quoted such customers were any higher than they would have been had there not been any such requesting or furnishing of price information, or showing or in any way indicating any uniformity or parallelism of prices between or among any two or more of the defendants.

21. The record contains statistics, together with graphical presentations prepared therefrom, showing for the entire period covered by the Complaint the four-week price trend of each plant of each defendant, except Albemarle, Miller and St. Joe, and the average monthly prices of St. Joe. These statistics tend to demonstrate the absence of any general uniformity, harmony, stability, or parallelism in prices either as among the several defendants or among the plants of individual defendants. Most price trends varied widely among the plants of the several defendants, both as to direction and as to degree.

IV. HOW PRICES DETERMINED

22. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following: (a) estimates prepared from its internal manual; (b) current plant production load or existence of idle time in its plant, a condition which varies widely in each plant from week to week, season to season, and with the rise and fall of business activity of its customers; (c)

suitability of the equipment in its plant for the production of the particular container and the expense of obtaining new equipment when necessary; (d) availability of any special materials needed to produce the order; (e) desirability of adding the particular order to the then scheduled plant production mix and the ability to do so, which varies continuously in the operation of the plant; (f) convenience of customer's plant location for servicing and cost of delivery; (g) size of the order, e.g., carload or less than carload shipment, and customer's prescribed delivery schedule; (h) customer's credit rating; (i) growth prospects of the account and the possibility of substantial future orders; (j) the experimental or developmental character of the particular container and the need to gain manufacturing and marketing experience with respect to it; (k) amount of customer's business represented by the order; (l) general market conditions in the Southeastern United States and in the corrugated container industry particularly; (m) prices of its recent sales of the same or other corrugated containers to that customer; (n) customer loyalty; (o) effect of the order on its costs and profits; and (p) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief.

23. A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially

the same; or (3) there had been a change in raw material costs or other significant costs.

24. Most purchasers of corrugated containers generally purchased their containers from two or more of the defendants concurrently.

25. Prices which purchasers of corrugated containers would pay were determined on the basis of price alternatives available to them from existing and prospective suppliers. It was necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers.

26. The defendants, in selling corrugated containers, dealt with buyers who had knowledge of prices which had been and were being offered by competing suppliers of corrugated containers.

27. Before determining the price to be quoted to a specific purchaser for a corrugated container, each defendant was interested in all pertinent marketing information applicable to such account. Among other things, each defendant considered the price which that purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing information and considered it beneficial to have such information.

28. All corrugated containers made to particular specifications were substantially identical regardless of which manufacturer produced them, and purchasers of corrugated containers were able to and did shift from one supplier to another on the basis of price. With minor exceptions, therefore, no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like con-

tainers to such purchaser, and it was important to each manufacturer to have accurate information as to the price alternatives available to such purchaser. Moreover, some purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotation, and if met, such purchasers often divided their purchases among some or all of the low-quoting manufacturers. In consequence, when a defendant obtained what it considered reliable information as to the most recent price to a specific customer for a specific corrugated container, in the majority of instances it quoted or charged substantially the same price, irrespective of whether the source of its information had been the purchaser or another supplier. In many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision.

V. OBTAINING PRICE INFORMATION

29. Possible sources for obtaining the most recent price to a specific customer for corrugated containers included the defendant's own records of prior sales, the particular purchaser involved, or one of his present or former corrugated container suppliers. Usually such information was obtained from the defendant's own records of prior sales, or from the particular purchaser involved. As used herein, the words "most recent price" mean either the most recent price charged a specific customer in an actual sale or the price most recently quoted.

30. On occasions, buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers.

31. No defendant furnished any competitor most recent price information except in response to a specific request therefor. However, when such information was furnished, it was usually accurate.

32. The extent and frequency with which most recent price information was requested or furnished varied among the several defendants and among the plants and customers of the individual defendants.

33. There is no evidence of express assurance that any defendant who furnished such price information upon request of another defendant would be able to obtain price information from such other defendant.

34. There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

35. The parties stipulated that if the officers or employees of each defendant responsible for pricing corrugated containers in the Southeastern United States were called to testify, each such officer or employee would testify that he considered that he could (with the exceptions noted in Findings 71, 167, 186 and 261), request from or furnish to competitors or not request from or furnish to competitors information as to prices for corrugated containers, and whether or not to request or furnish such information was an individual decision.

36. There is credible evidence tending to show that, generally speaking, when price information was requested of a defendant by a competitor, such de-

fendant's decision whether or not to furnish such information was not affected by any price or price level which such competitor had previously charged or quoted or which such competitor might thereafter charge or quote.

37. Throughout the period covered by the Complaint, each defendant felt free to cut a most recent price received from a competitor, and after receiving a most recent price from another defendant occasionally charged or quoted prices lower than those received.

38. No defendant at any time had any express agreement or understanding with any other defendant with respect to any price or prices to be charged or quoted for corrugated containers, irrespective of whether or not such defendant had requested from or furnished to the other any price information.

VI. THE 1940 CONSENT DECREE

39. On April 23, 1940, a consent decree was entered in an action entitled "United States of America, Plaintiff, against National Container Association, et al., Defendants" in the United States District Court for the Southern District of New York (Civil Action No. 8-318).

40. In addition to Container Corporation and Inland, defendants herein, the following corporations were among the defendants in the aforementioned action:

Robert Gair Company, Inc., which was subsequently merged into Continental;

Gaylord Container Corporation, which was subsequently merged into Crown Zellerbach;

The Hinde & Dauch Paper Company, which was subsequently merged into West Virginia;

The Jackson Box Company, which was subsequently merged into Mead;

F. J. Kress Box Company, Niagara Corrugated Container Co., Inc. and Superior Paper Products Co., which were subsequently merged into St. Regis;

National Container Corporation, which was subsequently merged into Owens-Illinois; and

Eddy Paper Corporation and Kieckhefer Container Corporation, which were subsequently merged into Weyerhaeuser.

41. On April 20, 1940, in presenting the consent decree for the approval of the District Court in the above-entitled action, counsel for the Government stated in open court:

"The Government regards this decree as fully complying with the Departmental policy. We think it is a well drafted document, which fully satisfies the Department's policy, in that it presents a constructive program which is designed to insure, not only that the violations complained of will cease, but also that such steps will be taken by the industry as will redound to the general public welfare."

42. A *nolle prosequi* was signed in the companion criminal action (No. C-105-445) on April 23, 1940, and entered April 24, 1940. In its *nolle prosequi*, the Government stated:

That it is the publicly announced policy of the Department of Justice to recommend that indictments under the Antitrust Laws be nolle prossed in the event that defendants voluntarily submit a program, embodied in a consent decree, which goes beyond anything that might be achieved by successful criminal prosecution and which binds them to a course of conduct deemed to be in the public interest in preventing the causes of illegal restraints of trade and

in promoting free competition in an orderly market;

* * * * *

3. That the National Container Association and the corporate defendants hereinafter named, and The Stevenson Corporation have agreed to the entry of a consent decree, Civil No. 8-318, which embodies substantially the requirements in such matters set out in Paragraph 1 above;

4. That such consent decree has been tendered by defendants voluntarily and in good faith;

5. That in the opinion of the Department of Justice; the nolle prosequing of this case as to the defendants hereinafter named is justified pursuant to the policy stated in Paragraph 1 above; * * *

43. The consent decree was widely publicized, both when it was entered and in the years subsequent thereto, in the corrugated container industry, and each of the defendants in the instant case has been cognizant of the existence of the decree and of the terms thereof and has relied thereon.

44. The consent decree provides, in part, as follows:

3. Nothing contained in this decree limits the right of said defendants, their successors, members, directors, officers, agents, and employees, and all persons acting under, through, or for them; or any of them, to do, or to cooperate in doing, any act, or to engage in any practice, not enjoined by this decree, including but not limited to the following:

(a) gathering, auditing, and disseminating information as to the cost of manufacture of corrugated and solid fibre containers, the volume of production and shipment, the actual price (or base price derived from actual price) which the product has brought in past transactions, stocks of merchandise and materials on

hand, approximate cost of transportation, and any other facts pertaining to the condition or operation of the industry, and meeting to discuss such information and statistics without, however, reaching or attempting to reach any agreement or any concerted action with respect to prices or production of such containers; * * *

4. Nothing contained in this decree limits the right of a defendant to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors.

VII. MANUALS AND INTERNAL MANUALS

45. Most of the defendants prepared manuals for their own internal use containing formulae and schedules of costs and/or charges from the application of which their respective approximate manufacturing costs and/or price estimates could be computed for most corrugated containers manufactured by them. Such manuals contained schedules of costs and/or charges for corrugated container board of various weights, strengths and wall constructions stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. They also contained various costs and/or charges relating to the actual manufacture of corrugated containers. The manuals further contained schedules of costs and/or charges, commonly called set-up charges, for the setting up of the necessary machinery for the production of corrugated containers of various specifications. Various of such manuals have been revised from time to time to reflect changes in costs, products, materials, designs and market conditions. These manuals were variously referred to by the companies which prepared them, among other things, as "cost manuals," "pricing manuals," "pricing procedures" or "estimating manuals." Whenever these manuals are hereinafter referred to,

they are specifically described as "internal manuals." Generally, the internal manuals were for internal use, and not available to the other defendants.

46. At various times, manuals containing formulae and schedules of charges, from the application of which a price estimate could be computed for most containers manufactured by them, were prepared by each of the following: National Container Corporation, The Old Dominion Box Company, Inc., Crown Zellerbach (Gaylord Container Division) and Inland. Each of said manuals was made available to other manufacturers of, and customers for, corrugated containers. Except as otherwise stated, as used hereafter the word "manual" means one of the manuals referred to in this Finding.

47. The manuals were variously referred to in the trade, among other things, as "price lists," "estimating and pricing manuals," or "estimating manuals."

48. Each of the manuals contained a schedule of charges for corrugated container board of various weights, strengths and wall constructions for use in computing corrugated container prices according to the particular manual employed. These charges are stated in terms of dollars and cents with a successively higher amount being listed for grades of board of successively greater strength. In the trade, these charges were variously called, among other things, an "area charge," "base," "base price," "board base price," "board factor," "multiplier," "level" and "board level."

49. The manuals also contained various charges relating to the actual manufacture of corrugated containers. Before the actual manufacturing process could begin, it was necessary to set up the production machinery to accommodate the particular specification, such as style, dimensions, printing, kind of joint,

etc., for each individual order and type of corrugated container. The manuals also contained a schedule of charges commonly called "set-up charges" to cover the cost of the setting up of the necessary machinery for the production of corrugated containers of various specifications.

50. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs, desirability of such business, and the anticipated profit involved. In this connection, each of the defendants has used one or more of the manuals to compute price estimates on a substantial number of occasions in one or more of the following ways:

(a) By application of the formulae and schedules of charges set forth therein;

(b) By application of the formulae and schedules of charges set forth therein, but employing a board level different from that stated therein.

(c) By application of the formulae and schedules of charges set forth therein, but employing a set-up charge different from that stated therein;

(d) By application of the formulae and schedules of charges set forth therein, but employing other charges different from those stated therein;

(e) By any combination of the applications referred to in subparagraphs (b) (c) and (d) hereof; or

(f) By any of the applications hereinabove set forth, but then applying a discount to the result.

The extent of such use varied among the several de-

fendants, and among the plants and customers of individual defendants.

51. In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant having an internal manual or internal manuals used such internal manuals in approximately the same ways and under the circumstances described in Finding 50, and often along with one or more of the manuals referred to in Finding 50. The extent of such use varied among the several defendants, and among the plants and customers of individual defendants.

52. If the same board level and set-up charge were used in computing a "manual" price for a corrugated container of particular specifications there would be, in most instances, little difference in the results of the computation, regardless of which manual was used in making the computation.

53. The actual price charged for corrugated containers was usually referred to in the trade as the "end price," which in most instances was different from any manual price referred to in Finding 52.

54. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, such information usually was furnished either in terms of an end price or in terms of a board level. In the case of some defendants, such information was furnished only in terms of an end price.

55. On those occasions when a defendant furnished to another defendant, upon his request, the most recent price to a specific customer for corrugated containers, end prices usually were furnished when the request involved only a few different container items, and board levels usually were furnished when the re-

quest involved more than a few different container items.

56. When a customer ordered two or more different corrugated containers, specifying the same test board for all but otherwise involving different specifications, usually the supplier filled said order at prices reflecting for the entire order a constant charge for board.

57. Each defendant having its own "manual" or "internal manual," prepared the same, and any revisions thereof, independently and without any agreement or understanding with any other defendant.

58. Price or cost estimates for a particular corrugated container computed under any one of such internal manuals differed from the price or cost estimates for such container computed under internal manuals of other companies.

59. The great majority of sales of each defendant was made at prices less than the prices would have been if computed on any published manual. There is no regular, prevalent or uniform percentage variation from any such computation in common use among any of the defendants, or in use by any individual defendant. Table 3 annexed to DX-1, and the Charts at pages 47 through 68 of DX-6, contain data illustrative of the foregoing for the several defendants for the period covered by the Complaint.

60. When Crown Zellerbach in 1957 prepared and issued its manual as described in Finding 46, it adopted, and for a period of months followed, a policy to adhere to said manual. During that period, no employee had authority to quote or charge prices lower than prices computed on the manual, and as a result Crown Zellerbach lost a great volume of business. It was compelled to abandon that policy to avoid losing all of its business. By cutting prices, it regained the business it lost.

VIII. THE FIBRE BOX ASSOCIATION

61. The Fibre Box Association, hereinafter called the "Association," was a trade association with a nationwide membership consisting of manufacturers of corrugated and solid fibre containers. The Association had geographic divisions and zones. Zone 10 comprised the States of Virginia and North Carolina, and was known as the Piedmont Group. Zone 11 comprised the States of South Carolina, Georgia, Florida, Alabama, and those portions of Tennessee and Kentucky east of the Tennessee River with the exception of Boone, Campbell, Jefferson and Kenton Counties of Kentucky, and was known as the Southeastern Group. Each of the defendants except Albemarle, Miller and St. Joe was a member of the Zone 10, Piedmont Group, and/or the Zone 11, Southeastern Group.

62. The Association employed a statistician who supervised its statistical program as a part of which each member compiled and submitted to the Association a weekly summary showing, in square feet, the quantity of corrugated and solid fibre shipments and the dollar value of these shipments. From this data, the Association prepared an overall corrugated price trend which was obtained by dividing the total dollars of sales made to the trade by the total footage shipped. These overall corrugated box price trends were compiled and published monthly for each division.

63. An analyzed price trend was also prepared by taking the reported sales of a selected variety of the more standard containers and adjusting the same for the box size and size of run to a common basis. These trend figures were computed for every member of the zones and divisions as well as for each respective zone and division as a unit. These divisions and zone price trends, as well as aggregate shipment figures for each

member, were issued to each member approximately ten days after the close of each week, and included comparative price trend figures for the prior 4-week periods, months, quarters and years. However, the individual member price trend figure was given only to that member. Due to the variety of the materials used and the great variety in construction of the containers, as well as differences in the "mix" due to seasonal factors, the indexes showed only price trends and could not be used for price comparison between competitors nor to ascertain the prices charged for any particular type of containers sold.

64. Meetings of members of Zones 10 and 11 were ordinarily held every four weeks with a representative of the Association and Legal Counsel, and at these meetings there was a review of statistics and charts showing substantially the same information referred to in Findings 62 and 63. In addition, statistics showing the production of paperboard, containerboard and boxboard were reviewed and compared with an average and with the prior year; and total raw material inventory figures were reported. A discussion of current business conditions for the corrugated container industry was usually included on the program agenda, and a discussion of current and expected demand for corrugated containers as indicated by incoming orders was often a part of the meeting.

65. Individual customer prices were not discussed at Association meetings. On some occasions, before or after said meetings, representatives of some of the defendants attending the meetings furnished most recent price information when requested by a representative of another defendant.

66. On most occasions during this period, the regular four-week Association meetings of the Piedmont Group and the Southeastern Group were held jointly.

IX. FINDINGS AS TO CONTAINER CORPORATION

67. In the trade, Container Corporation, after November 15, 1960, was sometimes known as "Mengel," but only for its Memphis, Tennessee, Nashville, Tennessee, Chattanooga, Tennessee, Lexington, Kentucky, and Winston-Salem, North Carolina, locations. Container Corporation acquired a stock interest in Mengel Company in 1954 and continued to increase its holdings of Mengel Common stock, owning approximately 69% by December 1955, and approximately 97% by December of 1959. All of Mengel's preferred stock was retired in April 1956. On November 15, 1960, Mengel Company was merged into Container Corporation.

68. Container Corporation, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

69. On those occasions when, prior to January 1963, Container Corporation considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

70. Prior to January 1963, when Container Corporation received a request from another defendant for the most recent price to a specific customer for corrugated containers, Container Corporation usually furnished the information requested.

71. Since January 1963, it has been Container Corporation's policy that its personnel shall not request or furnish price information from or to other manufacturers of corrugated containers. Prior to 1961, Container Corporation permitted its plant sales man-

agers and general managers in the Southeastern United States to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers. Beginning in 1961, and continuing until January 1963, it was Container Corporation's policy that only its Southeastern Divisional Manager was permitted to request or furnish the most recent price to a specific customer for corrugated containers from or to other manufacturers of corrugated containers.

72. The extent and frequency with which such information was requested and furnished varied among Container Corporation and the several other defendants and among the plants and customers of Container Corporation.

73. In the circumstances set forth in Findings 69 and 70, Container Corporation requested and/or furnished price information from and/or to each of the other defendants.

74. From time to time between 1958 and 1961, A. S. Clay, Sales Manager for the Winston-Salem Plant of Container Corporation, requested and furnished said price information. From time to time between 1955 and 1958, G. W. Colvin, when he was general manager of the Winston-Salem Plant of Container Corporation, and from time to time between 1961 and January 1963, when he was Southeastern Divisional Manager of Container Corporation, requested and furnished said price information.

75. As a general rule, pricing decisions were made by Container Corporation at the plant level, and the plant sales manager was primarily responsible for making price determinations. During the period between 1961 and January 1963, G. W. Colvin, Southeastern Divisional Manager, always communicated the price information he had received to the sales man-

ager of the specific plant and generally did not communicate any advice or instructions concerning the price to be charged by the sales manager, nor was he necessarily consulted by the sales manager concerning the price to be charged.

76. Container Corporation requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Container Corporation from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

77. Generally, it was the policy of G. W. Colvin, while Vice-President and Southeastern Divisional Manager for Container Corporation, not to cut a price that had been given to him. However, he testified that he knew of no such Container Corporation policy and that there were instances when Container Corporation had cut prices after obtaining price information from competitors, and he knew that there were some occasions when Container Corporation had its prices cut by competitors after giving price information to them. A. S. Clay had no rule, general practice, personal principle, or personal policy concerning the prices to be charged or quoted after he had received price information from competitors, and in each instance, he made the price determination himself.

78. When a Container Corporation plant sales manager requested and received price information as described in Finding 69, the sales manager used the information along with Container Corporation's internal manual, which was a cost rather than a sales price

manual, as well as his other market information, to help him determine whether he was interested in obtaining the business, and what price he would charge or quote that customer. The plant sales manager had no set policy with regard to submitting a quotation to a customer at a price lower than that which he had learned from a competitor. In determining his prices, each sales manager attempted to get as much as he could within reason. The sales manager felt no obligation with regard to a competitor who had furnished price information to him, nor was such obligation ever expressed to the sales manager by such a competitor.

79. In all instances, the determination as to the price to be charged or quoted by Container Corporation was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Container Corporation exercised its own business judgment.

80. As earlier stated, Container Corporation stopped requesting or furnishing price information in January 1963. A study of Container Corporation's analyzed prices at its plants shows that in the nine-month period from January to October 1963, average analyzed prices were substantially the same as the average analyzed prices at its plants in the nine-month period immediately preceding January 1963. Moreover, the range between the highest and lowest prices in each of its plants in the nine-month period before January 1963 was approximately the same as the range in those plants in the nine-month period from January to October 1963.

81. Container Corporation's price trends differed from those of each of its competitors, and there is no parallel between them.

82. Container Corporation's price trends also varied

from plant to plant; as shown by comparing the price trends of its plants for the years 1955 to 1963.

83. Container Corporation's prices also varied from month to month throughout the period covered by the Complaint.

X. FINDINGS AS TO ALBEMARLE

84. Albemarle, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Regis, although not necessarily at all times or in all areas or for all purchasers.

85. On those occasions when Albemarle considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

86. When Albemarle received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished, it was accurate.

87. The extent and frequency with which such information was requested or furnished varied among Albemarle and the several other defendants.

88. In the circumstances set forth in Findings 85 through 87, Albemarle requested and/or furnished price information from and/or to each of the other defendants, except Dixie of North Carolina, International, St. Joe and St. Regis.

89. The price information furnished by Albemarle related to prices charged customers in actual sales or prices actually quoted to customers.

90. From time to time, Anthony J. Bagley, President of Richmond Container from 1957 to September 9, 1959, and Division Manager of Albemarle after such date, and M. F. Dozier, Sales Manager of Richmond Container to September 9, 1959, and Division Sales Manager of Albemarle after such date, on occasion requested and furnished said price information.

91. Albemarle requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Albemarle from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

92. In all instances, the determination as to the price to be charged or quoted by Albemarle was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Albemarle exercised its own business judgment.

93. Albemarle's price trends differed from those of each of its competitors, and there is no parallel between them.

XI. FINDINGS AS TO CAROLINA

94. Carolina, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

95. On those occasions when Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

96. When Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

97. The extent and frequency with which such information was requested or furnished varied among Carolina and the several other defendants and among the customers of Carolina.

98. In the circumstances set forth in Findings 95 through 97, Carolina requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

99. There is no evidence that the price information furnished by Carolina related to prices quoted upon which an actual order had not at that time been received from the customer.

100. Carolina furnished price information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

101. From time to time, C. T. Ingram, Vice-President and General Manager of Carolina, and Carter Holbrook, Sales Manager of Carolina, on occasion requested and furnished said price information.

102. Carolina requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price infor-

mation received by Carolina from other defendants was taken into account and utilized by Carolina in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

103. In all instances the determination as to the price to be charged or quoted by Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Carolina exercised its own business judgment.

104. Carolina's price trends differed from those of each of its competitors, and there is no parallel between them.

105. Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XII. FINDINGS AS TO CONTINENTAL

106. After October 26, 1956, Continental, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

107. On those occasions after October 26, 1956, when Continental considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. When Continental received a request from another defendant for the most recent

price to a specific customer for corrugated containers, usually the information requested was furnished. Continental neither gave to nor received from St. Joe any price information.

108. The extent and frequency with which such information was requested or furnished varied among the plants and customers of Continental.

109. From time to time between October 26, 1956, and January 1, 1957, and between January 1960 and March 31, 1963, Robert Groner, Jr., as one of Continental's Sales Managers; and from and after January 1, 1962, Jehan B. Johnson, as one of Continental's Sales Managers; and between October 26, 1956, and May 15, 1962, William B. Beams, as one of Continental's Sales Managers, requested and furnished price information, as described in Finding 107.

110. Continental requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Continental from other defendants was taken into account and utilized by Continental in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

111. When Continental furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

112. In all instances, the determination as to the price to be charged or quoted by Continental was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged, or quoted, Continental exercised its own business judgment.

113. Continental's price trends differed from those of each of its competitors, and there is no parallel between them.

114. Continental's price trends also varied from plant to plant, as shown by comparing the price trends of its plants from the date it entered the corrugated container business to the date of the Complaint.

115. Continental's prices also varied from month to month throughout the period it was in the corrugated container business.

XIII. FINDINGS AS TO CROWN ZELLERBACH

116. Crown Zellerbach, in seeking business from the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

117. On those occasions when Crown Zellerbach considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

118. When Crown Zellerbach received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

119. The extent and frequency with which such information was requested or furnished varied among Crown Zellerbach and the several other defendants, and among the plants and customers of Crown Zellerbach.

120. In the circumstances set forth in Findings 117 through 119, Crown Zellerbach requested and/or furnished price information from and/or to each of the other defendants.

121. The price information furnished by Crown Zellerbach related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer, but only after such a quotation was in the hands of the customer.

122. From time to time, from and after November 1958, Gordon M. Clark, for a part of said time Sales Manager and later Resident Manager of the Greenville, South Carolina, plant of Crown Zellerbach, requested and furnished said price information.

123. Crown Zellerbach requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Crown Zellerbach from other defendants was taken into account and utilized by Crown Zellerbach in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

124. When Crown Zellerbach furnished price information to other defendants, it gave Crown Zellerbach an insight as to who was actively competing for a particular piece of business.

125. In all instances, the determination as to the price to be charged or quoted by Crown Zellerbach was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in

determining the price to be charged or quoted, Crown Zellerbach exercised its own business judgment.

126. Crown Zellerbach's price trends differed from those of each of its competitors, and there is no parallel between them.

127. Crown Zellerbach's prices varied from month to month throughout the period covered by the Complaint.

XIV. FINDINGS AS TO DIXIE AND DIXIE OF NORTH CAROLINA

128. Dixie and its subsidiary, Dixie of North Carolina, are engaged solely in the box business. They are not part of an integrated company which is also engaged in the paper mill business. The only other non-integrated defendants are Carolina and Tri-State. As an independent box maker, which had already paid a profit on the paper, and had to make its profit, if any, out of the box, it was particularly sensitive to price fluctuations which characterized the industry.

129. Dixie, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie of North Carolina, St. Joe and St. Regis, although not necessarily at all times or in all areas or for all purchasers. Dixie of North Carolina was not in competition with Albemarle, Crown Zellerbach, Inland, Miller, Dixie, St. Joe or St. Regis. It was in competition, in seeking business for the sale of corrugated containers, with each of the other ten defendants, although not necessarily at all times or in all areas or for all purchasers.

130. On those occasions when Dixie or Dixie of North Carolina considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was

usually requested from a defendant then supplying that customer with corrugated containers.

131. When Dixie or Dixie of North Carolina received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

132. The extent and frequency with which such information was requested or furnished varied among Dixie and the several other defendants, and among Dixie of North Carolina and the several other defendants. During differing intervals of time, Dixie did not request from or furnish such information to certain competitors.

133. H. L. Mitchell, Jr., was President of Dixie and Dixie of North Carolina. One of his purposes in seeking such information was to verify the accuracy of information secured from customers by salesmen of Dixie.

134. Mitchell found that some of the information furnished by competitors upon request was inaccurate.

135. The price information furnished by Dixie in most instances related to a price charged a customer in an actual sale. On occasion Dixie furnished information as to prices quoted upon which an actual order had not at that time been received from the customer. The price information requested and/or furnished by Dixie of North Carolina was "the last price he [the competitor of Dixie of North Carolina] got for the item or order."

136. In the circumstances set forth in Findings 130 and 131, Dixie and Dixie of North Carolina requested and/or furnished price information from and/or to each of the other defendants with which it competed.

137. From time to time, Mitchell, President of defendant Dixie, requested and/or furnished said price information.

138. From time to time, Joseph S. Schwind, Sales Manager for Dixie of North Carolina, requested and/or furnished said price information.

139. Mitchell gave competitors the most recent price to a specific customer with the hope that the competitor would not cut any more than necessary to get the business.

140. Mitchell had a policy of not calling the competition if he was going to cut a price; his experience was that some competitors would immediately reduce a price after answering an inquiry from Mitchell.

141. Dixie and Dixie of North Carolina requested price information from other defendants in order to aid them in making informed pricing and marketing decisions. Price information received by them from other defendants was taken into account and utilized by each of them in individually determining the prices to be charged or quoted by them in the same manner, to the same extent, and with the same effect as price information which they usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

142. In all instances, the determination as to the price to be charged or quoted by Dixie or Dixie of North Carolina was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Dixie and Dixie of North Carolina exercised their own business judgment.

143. Dixie's price trends and Dixie of North Carolina's price trends differed from those of each of their competitors, and there is no parallel between them.

144. Dixie's prices and Dixie of North Carolina's prices also varied from month to month throughout the period covered by the Complaint.

XV. FINDINGS AS TO INLAND

145. Inland, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

146. On those occasions when Inland considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

147. When Inland received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

148. The extent and frequency with which such information was requested or furnished varied among Inland and the several other defendants, and among the plants and customers of Inland.

149. In the circumstances set forth in Findings 146 through 148, Inland requested and/or furnished price information from and/or to each of the other defendants.

150. From time to time, during the period covered by the Complaint, Frank M. Talbot, Southern Region Sales Manager for Inland, and Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, requested and furnished said price information.

151. In a written statement issued under date of

July 14, 1961, Inland's policy with respect to requesting and furnishing price information from and to other manufacturers of corrugated containers was set forth. It was binding upon all of its Sales Managers, including the said Barnell E. Roberts and Frank Talbot. Such policy was unilaterally and independently adopted by Inland. Such policy, and the deposition testimony of said Roberts and Talbot, establish that:

(a) Inland's purpose in the requesting and furnishing of price information was to enable it to be better informed in making price determinations.

(b) Its policy in this regard was in reliance upon, and believed by Inland to have been contemplated by, the aforementioned consent decree.

(c) Inland's policy was to request price information from another manufacturer if needed to make an intelligent price decision, and if such information was not obtainable from some other source. Such information was received usually and ordinarily from the purchaser. In some cases, such information was sought to verify a claim of a purchaser (who was attempting to have Inland reduce its price) that another supplier had reduced its price, in circumstances in which the salesmen doubted the reliability of such claim.

(d) Price information so received from another manufacturer was taken into account by Inland's Sales Managers in the same manner and with the same effect as like information usually and ordinarily received from the purchasers, provided the price information received from purchasers was considered reliable.

(e) In a situation in which Inland had a contract with a customer, who was then also being supplied by other manufacturers and during a

period when prices had been low for years, and the customer reported that another supplier in the account had reduced its prices, which report the Sales Manager believed doubtful, such Sales Manager would attempt to verify such report with such other supplier because he did not desire to reduce Inland's prices any lower than in fact the prices had been lowered as represented by the customer.

(f) Said policy authorized Inland's Sales Managers to furnish price information requested by other manufacturers within the limits prescribed for requesting such information. Whether to furnish such information upon request was a matter of individual decision by the Sales Managers. It was believed by them that it served Inland's self-interest to furnish such information upon request because they believed that they could not obtain price information from another manufacturer unless they usually furnished price information when requested.

(g) Said policy and Inland's practice thereunder was to request and furnish only the price of the most recent past sale.

152. When Inland furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

153. In all instances, the determination as to the price to be charged or quoted by Inland was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Inland exercised its own business judgment.

154. Inland's price trends differed from those of each of its competitors, and there is no parallel between them.

XVI. FINDINGS AS TO INTERNATIONAL

155. International, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

156. Two employees of International were called by plaintiff to testify on deposition, Edward Agar, from 1948-1957 manager of International's Container Division plant in Spring Hill, Louisiana, and since 1957 manager for the Southern Region of the Company's Container Division, and Hugh L. Reid, for the past 16 years general manager of International's Container Division plant at Georgetown, South Carolina.

157. During the period 1955 to 1963, at times purchasing agents attempted to persuade International to lower its prices by advising International's sales representatives that its prices were too high when compared with those of other suppliers, and offered International the chance to meet a lower price in order to obtain or retain the business. Sometimes the purchasing agent identified the other supplier and price. Sometimes the price information supplied by the purchasing agent was incomplete, inaccurate, or misleading. On occasion, in the period prior to about June 1962, International made telephone calls to other suppliers to verify the information as to past prices charged which had been supplied by the purchasing agent.

158. Communication of price information by International to other suppliers of corrugated containers occurred without any pattern or regularity, and varied from period to period. Frequency ranged from about 10 or 12 calls a month to about 2 or 3 calls a month, in-

cluding those made as well as received, with many days without any calls, and on some occasions 2 or 3 a day.

159. International had 23 salesmen in the Southeast making an average of 4 to 5 calls daily on customers and potential customers. In other words, International's salesmen in soliciting business made on the average 92 to 100 calls a day, or 1800 to 2000 calls a month, on purchasers of corrugated containers who bought on a spot or short-term basis covering immediate or near-term requirements. In 1962, International had 449 customers in the Southeast out of more than 10,000 potential customers.

160. Agar had broad administrative responsibilities for a number of plants, including administration, production, sales and personnel, and did not have any direct pricing responsibility. Accordingly, he had no files showing International's prices, and on the infrequent occasions when he was asked for such information by a competitor he obtained it from the plant manager. While Reid had sole pricing authority for the Georgetown plant, and had files showing past prices charged by International, he had many other duties in operating the plant and spent only a minor portion of his time in determining prices.

161. In the circumstances set forth in Findings 157 through 160, and in Findings 162 through 169, International requested and/or furnished price information from and/or to each of the other defendants, except Albemarle and St. Joe. One of International's employees, Reid, testified that he was not sure he had ever, in the eight-year period in question, communicated price information to five of the defendants, and the other International employee, Agar, testified that he did not know four of the 17 other defendants. As to the eight of the defendants about which he was

questioned, he could not recall any incident when he gave or received any price information from them.

162. On those occasions when, prior to June 1962, International considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

163. International requested price information on past transactions from another supplier, at times when International had been invited by a customer to meet the price of such other supplier.

164. When offered the opportunity by a customer to meet the price of another supplier, International sought information as to past prices charged by such other supplier to verify the customer's information about such supplier's price in those instances where International wanted to make certain it was a real price and the circumstances justified International making an effort to obtain the business of the customer.

165. Prior to June 1962, when International received a request from another defendant for the most recent price to a specific customer for corrugated containers, International usually furnished the information requested.

166. In responding to specific requests for price information on past transactions by other suppliers of corrugated containers, International furnished only end prices for the particular corrugated box as to which inquiry was made.

167. In June 1962, International decided that it would no longer furnish price information to, or request such information from, other suppliers of cor-

rugated containers. While no formal announcement was made of such decision, those who called requesting information were informed that such information would not be furnished.

168. During the time when International furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

169. International requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. The price information received by International from other defendants was taken into account and utilized by International in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

170. There is no evidence that any employee of any defendant ever discussed with any employee of International the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information.

171. As one of the factors in computing a price to offer or charge a customer, International on all occasions used its own internal estimating manual. International's manual was prepared and revised independently by it without any agreement or understanding with any other defendant. International did not give its manual to any competitor or customer but retained

it for its own use. International did not discuss its manual, or its preparation or revision, with any competitor.

172. International had no manuals of its competitors, except those of National Container Company and Gaylord Container Corporation, which had been obtained from customers of International. On infrequent occasions, in the period about 1958-1960, with respect to accounts which were then being sold by Gaylord, reference was made to the Gaylord manual as an added aid with other factors in helping the plant manager make up his mind as to the price he would quote the customer. If in those accounts the price of a particular container was less when computed on the Gaylord manual than on International's internal manual, and this was business which Reid desired to retain or obtain based on many other factors as to the desirability of the business, he would take into consideration the price developed from the Gaylord manual. In a period sometime before 1958, the National Container manual was referred to by Reid in the same way in competing for business on accounts which were being supplied by National Container Corporation, although with less frequency.

173. There was no relationship in the prices developed on International's internal manual and on Gaylord's manual. With respect to some containers, International's manual would develop a higher price; with respect to others, it would develop a lower price.

174. In all instances, the determination as to the price to be charged or quoted by International was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, International exercised its own business judgment.

175. International increased its capacity to compete by opening new plants in other market areas in the Southeast. In 1957, a new plant was opened in Auburndale, Florida, and in 1962, a new plant was opened in Statesville, North Carolina.

176. During the period 1955 to 1963, the trend of International's prices was downward, while at the same time costs had increased. International continually instructed its employees to attempt to improve earnings by obtaining the highest possible prices for corrugated containers.

177. International lost customers to, and gained customers from, other suppliers of corrugated containers on the basis of price. In 1960, out of 408 separate accounts in the Georgetown and Auburndale plants, 162 accounts, or almost 40%, were totally new accounts gained by these plants, while 64 accounts represented customers lost. Of the 408 accounts in 1960, 110 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1960, a total of 336 out of 408 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1961, out of 447 separate accounts at these same plants, 135 accounts, or 30%, were totally new accounts; 96 were lost. Of the 447 accounts in 1961, 143 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus, in 1961, a total of 384 out of 447 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). In 1962, out of 449 separate accounts at

those plants, 116 accounts, or 28%, were totally new accounts; at the same time more than 28% of the accounts, or 114, were lost. Of the 449 accounts in 1962, 184 represented customers where in each case International's sales either rose to more than 150%, or declined to less than 50%, of the preceding year's sales to that customer. Thus in 1962, a total of 414 out of 449 accounts were involved in shifts of business to or from International, either totally or substantially (i.e., one-half or more). These figures are representative of the entire period covered by the Complaint.

178. International's price trends differed from those of each of its competitors, and there is no parallel between them.

179. International's price trends also varied from plant to plant, as shown by comparing the Georgetown and Auburndale plants' price trends for 1961 and for 1955-1963.

180. International's prices also varied from month to month throughout the period covered by the Complaint.

181. As earlier stated, International stopped requesting or furnishing price information in June 1962. A study of International's analyzed prices at its Auburndale, Florida, and Georgetown, South Carolina, plants shows that in the twelve-month period after June 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June 1962. Moreover, the range between the highest and lowest prices in the Georgetown and Auburndale plants in the year before June 1962, was approximately the same as the range in those plants in the year following June 1962.

XVII. FINDINGS AS TO MEAD

182. Mead, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not at all times or in all areas or for all purchasers.

183. On those occasions when prior to 1961, and thereafter under the circumstances set forth in Findings 186 and 187:

(a) Mead considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

(b) When Mead received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

(c) During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

184. The extent and frequency with which such information was requested or furnished varied among Mead and the several other defendants, and among the plants and customers of Mead.

185. The price information which Mead requested and/or furnished, as described in Findings 183 and 184, was requested and/or furnished from and/or to each of the other defendants, and related to prices charged customers in actual sales or to prices quoted upon which an actual order had not at that time been received from the customer.

186. In June 1961, Mead issued a written directive to all of its personnel, one of the effects of which was to prohibit its personnel from requesting or furnishing price information from or to other manufacturers of corrugated containers. In the fall of 1961, the Containers Division of Mead, at the request of its Southeastern Regional Sales Manager, Virgil C. Shutze, temporarily relaxed the aforesaid prohibition against requesting and furnishing price information from and to other manufacturers of corrugated containers, to a limited extent as to him personally. Thereafter, said Virgil C. Shutze relaxed said prohibition to some extent to District Sales Managers under his supervision. Said Virgil C. Shutze, as Southeastern Regional Sales Manager for Mead's Containers Division, had jurisdiction over Florida, Georgia and Tennessee. During the period of the aforesaid relaxation of the prohibition against requesting and furnishing price information from or to other manufacturers of corrugated containers, District Sales Managers of Mead's Containers Division, Southeastern Region, requested and furnished the most recent price to a specific customer for corrugated containers from or to other defendants in the circumstances herein described. In the spring of 1962, Mead called its Southeastern Regional Sales Manager and the District Sales Managers of Mead's Containers Division to Mead's head office in Dayton, Ohio, at which Mead's policy was reiterated by Mead's principal executive officers and those present were told that no exceptions would be countenanced. This has been Mead's policy since the spring of 1962.

187. In the fall of 1961, Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers

were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding 186, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels in accounts for which Mead was competing.

188. A study of Mead's analyzed prices at its Atlanta, Georgia, Durham, North Carolina, and Miami, Florida, plants shows that in the twelve-month period after April, 1962, average analyzed prices were substantially the same as the average analyzed prices for those plants in the twelve-month period immediately preceding June, 1961.

189. On those occasions when Mead did seek and receive price information from another defendant:

(a) Mead sought such price information only when no other source of such information was available, or when it had obtained recent price information from the purchaser and desired to ascertain the accuracy of such information.

(b) Mead requested such price information for the aforesaid reasons in order to aid it in making informed pricing and marketing decisions. The price information received by Mead from other defendants was taken into account

and utilized by Mead in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect, as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

(c) Many factors influenced Mead's decision in making a price determination, and in making such a decision, Mead exercised its own business judgment. A price believed to have been most recently charged or quoted by a competitor, when Mead believed it had sufficient basis for such belief, was only one of many factors influencing Mead's pricing decision.

(d) In many instances, depending upon particular circumstances, Mead would quote lower or higher prices than that indicated by its information as to the most recent price charged the customer, from whatever source the information was obtained; and in all instances the determination as to the price to be charged or quoted was Mead's individual decision.

190. On those occasions prior to 1961, and thereafter, under the circumstances set forth in Findings 186 and 187, when competitors requested price information, Mead usually furnished price information to that competitor, and hoped that doing so would prompt that competitor to furnish price information to Mead on those subsequent occasions when Mead considered it necessary to request price information.

191. During the time when Mead furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

192. Mead's price trends differed from those of each of its competitors, and there is no parallel between them.

193. Mead's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

194. Mead's prices also varied from month to month throughout the period covered by the Complaint.

195. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Mead exercised its own business judgment.

XVIII. FINDINGS AS TO MILLER

196. Miller, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

197. On those occasions when Miller considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

198. When Miller received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

199. The extent and frequency with which such information was requested or furnished varied among Miller and the several other defendants.

200. In the circumstances set forth in Findings 197 through 199, Miller requested and/or furnished price

information from and/or to each of the other defendants, except St. Joe and St. Regis.

201. From time to time, Harold P. Kyle, as President of Miller, and William M. Noftsinger, as Vice-President and Sales Manager of Miller, gave and received said price information.

202. Miller requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Miller from other defendants was taken into account and utilized by Miller in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

203. When Miller furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

204. When Miller furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

205. In all instances, the determination as to the price to be charged or quoted by Miller was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Miller exercised its own business judgment.

206. Miller's price trends differed from those of each of its competitors, and there is no parallel between them.

XIX. FINDINGS AS TO OWENS-ILLINOIS

207. Owens-Illinois, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

208. On those occasions when Owens-Illinois considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

209. When Owens-Illinois received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

210. The extent and frequency with which such information was requested or furnished varied among Owens-Illinois and the several other defendants and among the plants and customers of Owens-Illinois.

211. In the circumstances set forth in Findings 208 through 210, Owens-Illinois requested and/or furnished price information from and/or to each of the other defendants.

212. There is no evidence that the price information furnished by Owens-Illinois related to prices quoted upon which an actual order had not at that time been received from the customer.

213. From time to time, from and after October,

1961, Thomas M. Cox, Jr., General Manager of the Southeastern Region of the Forest Products Division of Owens-Illinois, and from time to time, from and after the Spring of 1958, Kenneth E. Rosenbaum, for part of said time Sales Manager and later General Manager of the Salisbury, North Carolina, plant of Owens-Illinois, on occasion requested and furnished price information.

214. Owens-Illinois requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Owens-Illinois from other defendants was taken into account and utilized by Owens-Illinois in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

215. When Owens-Illinois furnished another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant.

216. When Owens-Illinois furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

217. In all instances, the determination as to the price to be charged or quoted by Owens-Illinois was its individual decision. In deciding whether to seek a particular order from a particular customer, or wheth-

er to offer to sell a particular container, and in determining the price to be charged or quoted, Owens-Illinois exercised its own business judgment.

218. Owens-Illinois' price trends differed from those of each of its competitors, and there is no parallel between them.

219. Owens-Illinois' price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

220. Owens-Illinois' prices also varied from month to month throughout the period covered by the Complaint.

XX. FINDINGS AS TO ST. JOE

221. St. Joe, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Dixie, Dixie of North Carolina, and Miller, although not necessarily at all times or in all areas or for all purchasers.

222. On those occasions when St. Joe considered it necessary to ascertain the accuracy of a customer's report of a price charged by another defendant, or to ascertain from another defendant the most recent price charged to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

223. When St. Joe received a request from another defendant for the most recent price charged to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

224. St. Joe requested or furnished price information from or to other defendants infrequently.

225. In the circumstances set forth in Findings 222 through 224, St. Joe requested and/or furnished price

information from and/or to Container Corporation, Crown Zellerbach, Inland, Mead, Owens-Illinois, St. Regis, West Virginia, and Weyerhaeuser.

226. St. Joe neither furnished nor requested any price information, except a price charged the customer in an actual sale. No representative of St. Joe at any time requested from or furnished to any other defendant information as to prices in terms other than an end price or prices.

227. When St. Joe requested or furnished price information, it was done exclusively by telephone.

228. St. Joe would request price information from another defendant only after St. Joe had analyzed the business and determined that it was desirable from the standpoint of type of linerboard required, contribution to plant product mix, customer's credit standing, and other relevant factors. St. Joe then would not request price information from another defendant unless it did not have enough information itself to determine a price, had not received price information from a customer, and did not have its own past price record for that customer.

229. St. Joe requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by St. Joe from other defendants was taken into account and utilized by it in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

230. When St. Joe furnished another defendant, upon request, the most recent price charged to a spe-

cific customer, it did so believing that it was unlikely that it could obtain price information from such other defendant, on those occasions when it considered it necessary to request such information, unless it usually furnished price information when requested by such other defendant. When St. Joe furnished price information to another defendant, St. Joe had no assurance that it would be able to obtain similar price information if it requested it on another occasion.

231. St. Joe had no company policy as to furnishing or requesting price information to or from other defendants. The entire authority for pricing containers was left to its General Managers for its corrugated container plants at Port St. Joe, Florida, and Birmingham, Alabama. No one at its corporate headquarters in Jacksonville, Florida, had any responsibility for pricing specific customers, nor did they receive any reports from the General Managers showing any prices for specific customers.

232. When St. Joe furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

233. In all instances, the determination as to the price to be charged or quoted by St. Joe was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Joe exercised its own business judgment.

234. St. Joe's price trends differed from those of each of its competitors, and there is no parallel between them.

235. St. Joe's price trends varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

236. St. Joe's prices also varied from month to month throughout the period covered by the Complaint.

XXI. FINDINGS AS TO ST. REGIS

237. St. Regis, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except Albemarle, Dixie, Dixie of North Carolina and Miller, although not necessarily at all times or in all areas or for all purchasers.

238. On the occasions when St. Regis considered it necessary to ascertain the accuracy of a customer's report of another defendant's price or to ascertain from another defendant the most recent price to a specific customer, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

239. When St. Regis received a request from another defendant for the most recent price to a specific customer for corrugated containers, such information was sometimes, but not always, furnished.

240. The extent and frequency with which such information was requested or furnished varied among St. Regis and the several other defendants and among plants and customers of St. Regis.

241. In the circumstances set forth in Findings 237 through 240, St. Regis requested and/or furnished price information from and/or to each of the defendants, except Albemarle, Dixie, Dixie of North Carolina, and Miller.

242. The price information requested or furnished by St. Regis related to prices charged customers in completed sales in which the customer had been billed.

243. From time to time, from and after October 1958, W. L. Diggs, as Southern District Manager for St. Regis, requested or furnished price information as described in Finding 242.

244. Price information received by St. Regis' officers or employees from other defendants was given consideration in determining the prices to be charged or quoted by St. Regis in the same manner, and with the same effect, as price information received from customers, provided the price information received from customers was considered reliable.

245. When St. Regis furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

246. In all instances, the determination as to the price to be charged or quoted by St. Regis was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, St. Regis exercised its own business judgment.

247. St. Regis' price trends differed from those of each of its competitors, and there is no parallel between them.

248. St. Regis' price trends varied from plant to plant, for 1955-1963, as shown by comparing the price trends of its plants.

249. St. Regis' prices also varied from month to month throughout the period covered by the Complaint.

XXII. FINDINGS AS TO TRI-STATE

250. Tri-State, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, except St. Joe, although not necessarily at all times or in all areas or for all purchasers.

251. On those occasions when Tri-State considered it necessary to ascertain the accuracy of a customer's

report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

252. When Tri-State received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished and the information furnished was accurate.

253. In the circumstances set forth in Findings 251 and 252, Tri-State requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

254. From time to time, during the period covered by the Complaint, Alan McDonald, Sales Manager for Tri-State, requested and furnished said price information.

255. The price information requested and/or furnished by Tri-State related to consummated sales.

256. Price information received by Tri-State from other defendants was taken into account by Tri-State in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

257. When Tri-State furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

258. In all instances, the determination as to the price to be charged or quoted by Tri-State was its

individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Tri-State exercised its own business judgment.

259. Tri-State's price trends differed from those of each of its competitors, and there is no parallel between them.

260. Tri-State was cognizant of the existence of the consent decree referred to in Findings 39 through 44 hereof, and relied upon the terms thereof.

XXIII. FINDINGS AS TO UNION-CAMP

261. Union-Camp, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

262. On those occasions when Union-Camp considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers. However, during the period from July 16, 1963, to October 10, 1963 (during which period Union-Camp was making a general increase in prices to its customers), Union-Camp neither requested nor furnished such price information.

263. When Union-Camp received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

264. The extent and frequency with which such in-

formation was requested or furnished varied among Union-Camp and the several other defendants and among the plants and customers of Union-Camp. Union-Camp, at its Spartanburg plant, received four or five requests per week.

265. In the circumstances set forth in Findings 261 through 264, Union-Camp requested and/or furnished price information from and/or to each of the other defendants, except St. Joe.

266. The price information furnished by Union-Camp was the price at which it had sold or quoted to a specific customer. The plant managers of Union-Camp were authorized to give such price information at the request of a competitor.

267. During the time when Union-Camp furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

268. The price information received by Union-Camp from other defendants was taken into account by Union-Camp in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

269. Lewis A. Wulff, from time to time, from and after July 1, 1963, until July 10, 1963, and from October 10, 1963, until October 14, 1963, as Southeastern Regional Sales Manager for Union-Camp; Frank B. Grimes, from January 1, 1960, until July 16, 1963, as Sales Manager of the Spartanburg, South Carolina, plant of Union-Camp; John I. Pritchett, during part or all of the period from December 1, 1959, until July 16, 1963, as an employee of Union-Camp, and J. E.

Faulkner, Jr., from December 1, 1959, until July 16, 1963, as Sales Manager of the Jamestown plant of Union-Camp, requested and furnished said price information.

270. When Grimes, and the other Union-Camp plant managers referred to in Finding 269, furnished most recent price information to a competitor, they were following a Union-Camp policy which permitted its plant managers to give this information in the hope that, when they needed it, the competitor, in turn, would furnish such information. Grimes believed he could not expect to receive such information unless he gave it. In addition, by furnishing such information to another defendant, Union-Camp knew the source of some of the competition it would meet for a particular piece of business.

271. Union-Camp requested most recent price information to enable it to determine whether, in a particular account and at a particular time, it wanted to meet a competitor's price, quote higher, or quote lower.

272. In all instances, the determination as to the price to be charged or quoted by Union-Camp was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Union-Camp exercised its own business judgment.

273. Union-Camp's price trends differed from those of each of its competitors, and there is no parallel between them.

XXIV. FINDINGS AS TO WEST VIRGINIA

274. West Virginia, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

275. On those occasions when West Virginia considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

276. When West Virginia received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished.

277. The extent and frequency with which such information was requested or furnished varied among West Virginia and the several other defendants and among the plants and customers of West Virginia.

278. In the circumstances set forth in Findings 275 through 277, West Virginia requested and/or furnished price information from and/or to each of the other defendants.

279. The price information requested and/or furnished by West Virginia related to prices charged customers in actual sales, or to prices quoted upon which an actual order had not at that time been received from the customer.

280. From time to time, during the period covered by the Complaint, David B. Orcutt, Jr., Richmond District Sales Manager of West Virginia, requested and furnished price information. From time to time, from and after November, 1959, Joseph T. Piemonte, Sales Manager of the Richmond Region of West Virginia, furnished to three competitors information relating to prices charged customers, in completed sales only, but he did not request any price information from others.

281. West Virginia requested price information

from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by West Virginia from other defendants was taken into account by West Virginia in individually determining the prices to be charged or quoted by it in the same manner, and with the same effect, as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

282. When West Virginia furnished another defendant, upon the latter's request, price information, it did so hoping that such information would be given to it on those occasions when it might want such information.

283. When West Virginia furnished or requested such price information, it furnished such information only in response to a competitor's request, and was supplied such information only pursuant to its own specific request.

284. In all instances, the determination as to the price to be charged or quoted by West Virginia was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, West Virginia exercised its own business judgment.

285. West Virginia's price trends differed from those of each of its competitors, and there is no parallel between them.

286. West Virginia's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

287. West Virginia's prices also varied from month to month throughout the period covered by the Complaint.

XXV. FINDINGS AS TO WEYERHAEUSER

288. Weyerhaeuser, in seeking business for the sale of corrugated containers, was in competition with each of the other defendants, although not necessarily at all times or in all areas or for all purchasers.

289. On those occasions when Weyerhaeuser considered it necessary to ascertain the accuracy of a customer's report of another defendant's price, or to ascertain from another defendant the most recent price to a specific customer for corrugated containers, such price information was usually requested from a defendant then supplying that customer with corrugated containers.

290. When Weyerhaeuser received a request from another defendant for the most recent price to a specific customer for corrugated containers, usually the information requested was furnished, and on those occasions when the information was furnished it was accurate.

291. The extent and frequency with which such information was requested or furnished varied among Weyerhaeuser and the several other defendants and among the plants and customers of Weyerhaeuser.

292. In the circumstances set forth in Findings 289 through 291, Weyerhaeuser requested and/or furnished price information from and/or to each of the other defendants.

293. The price information requested and/or furnished by Weyerhaeuser related to prices charged customers in actual sales.

294. From time to time, from and after the middle of August 1961, to October 13, 1963, George W. Elliott, Jr., Sales Manager of the Charlotte Plant of Weyerhaeuser, and from time to time, from and after June 1962, to October 13, 1963, Ivan D. Wood, Vice-President and Manager of the Shipping Container

Division of Weyerhaeuser, on occasion requested and furnished said price information.

295. Weyerhaeuser requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by Weyerhaeuser from other defendants was taken into account and utilized by Weyerhaeuser in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable.

296. When an employee of Weyerhaeuser made his individual decision to furnish another defendant, upon request, the most recent price charged to a specific customer for corrugated containers, he did so believing that it was unlikely that he could obtain price information from such other defendant, on those occasions when he might consider it necessary to request such information, unless he furnished price information when requested by such other defendant.

297. When Weyerhaeuser furnished or requested such price information, it furnished such information only in response to a competitor's request and was supplied such information only pursuant to its own specific request.

298. In all instances, the determination as to the price to be charged or quoted by Weyerhaeuser was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, Weyerhaeuser exercised its own business judgment.

299. Weyerhaeuser's price trends differed from those of each of its competitors, and there is no parallel between them.

300. Weyerhaeuser's price trends also varied from plant to plant, as shown by comparing the price trends of its plants for 1955-1963.

301. Weyerhaeuser's prices also varied from month to month throughout the period covered by the Complaint.

XXVI. FINDINGS WITH RESPECT TO "OTHER CONDUCT" OF VARIOUS
DEFENDANTS

302. In 1955, there was a meeting at the Plaza Hotel in New York, New York, at which representatives of defendant Dixie and of other non-defendant corrugated container manufacturers were present. Anthony J. Bagley, then President of Richmond Container Company (which was acquired by defendant Albemarle four years later), announced that his Company would increase its prices to American Tobacco Company. After the meeting, Bagley increased his prices to American Tobacco Company, but no one else did, and Bagley thereafter withdrew his price increase. Bagley testified that for all intents and purposes the people who attended the meeting could have stayed home.

303. Early in 1956, corrugated container manufacturers from the Baltimore area solicited business in the eastern part of Virginia for the manufacture and sale of corrugated containers at prices which in general were lower than the prices which corrugated container users in the eastern part of Virginia were then paying for similar corrugated containers. Miller, Dixie, Robert Gair Company, prior to its acquisition by Continental, Richmond Container Corporation, prior to its acquisition by Albemarle, and possibly

West Virginia, endeavored to ascertain the localities in eastern Virginia in which the aforesaid Baltimore manufacturers were active, so that each could identify geographically the area in which it would be necessary to lower corrugated container prices to meet the competition of Baltimore manufacturers. These matters were discussed by telephone and at a meeting. Thereafter, in early 1956, Miller and Richmond Container Corporation (subsequently merged into Albemarle) each adopted lower nominal board factors for eastern Virginia than for western Virginia.

304. Prior to July 1, 1959, each defendant included in its prices to many of its customers a set-up charge (Finding 49) of \$15.00 for regular slotted cartons. Thereafter, and continuing into 1960, each defendant sought to increase its set-up charge for such cartons by \$10.00 to many of its customers. By July 1960, each defendant included in its prices to many of its customers a set-up charge of \$25.00 for regular slotted cartons. However, throughout such period, the amount of such set-up charges varied among the several defendants and among the plants and customers of individual defendants, and in many instances the amount of set-up charge sought or received, if any, was less than the aforesaid amounts.

305. In or about May or June 1959, there was a meeting at the Sir Walter Raleigh Hotel in Raleigh, North Carolina, for a period of some 20 to 30 minutes, at which representatives of Container Corporation, Dixie, Crown Zellerbach and Owens-Illinois were present. Either John I. Pritchett or J. E. Faulkner, Jr., of Highland Container Corporation (a company which then had been partially acquired by Union-Camp in March 1959, and later fully acquired in September 1959, and merged into Union-Camp in December 1959), upon entering the meeting, announced that

their company was increasing its set-up charge from \$15.00 to \$25.00 and thereupon left the meeting.

306. On July 29, 1959, there was a meeting at Dimizzio's Restaurant in Salisbury, North Carolina, at which representatives of Carolina, Continental, Crown Zellerbach, Container Corporation, Dixie, Dixie of North Carolina, Mead, Miller and Owens-Illinois were present, and at which some of them exchanged views as to how the trade had accepted an increase in set-up charges.

307. The representative of Owen-Illinois present at the meetings at the Sir Walter Hotel and Dimizzio's Restaurant was Kenneth E. Rosenbaum.

308. The representative of Crown Zellerbach present at the meetings at the Sir Walter Hotel and at Dimizzio's Restaurant was Gordon M. Clark.

309. The representative of Container Corporation present at the meeting at Dimizzio's Restaurant was Adolphus S. Clay; the representative of Miller present was William M. Noftsinger, and the representative of Carolina present was Carter Holbrook.

310. Joseph Schwind, Sales Manager for Dixie of North Carolina, attended the meeting at Dimizzio's Restaurant. At that time he had just started as Sales Manager in Morganton, North Carolina (home office of Dixie of North Carolina), and his purpose in going was to meet his competitors. H. L. Mitchell, President of Dixie, also attended the meeting at Dimizzio's Restaurant. His primary purpose in attending was to bring Schwind and introduce him to as many of his competitors as possible.

311. H. L. Mitchell, President of Dixie, immediately after a Fibre Box Association meeting, in a conversation with Anthony J. Bagley, representing Richmond Container, suggested that Richmond Container raise its prices to Burlington Industries.

313. Prior to July 27, 1961, Inland and Crown Zellerbach, among others, had announced general increases in their respective prices for corrugated containers in varying amounts, effective on varying dates. Subsequent to these public announcements, a regularly scheduled meeting of Zones 10 and 11 of the Fibre Box Association was held on July 27, 1961, at which legal counsel was present. On July 31, 1961, Lee J. Ross, then manager of the Atlantic plant of Crown Zellerbach, wrote an inter-office memorandum to his superior in that company as follows:

As outlined in your conversation of last Friday morning, the following information was given to Paul Claus in San Francisco.

As per my letter to you of July 26, the statement as outlined was read by me to the Fibre Box Association. Inland Container also made a statement advising that there was a letter in the mail to their customers that prices would be increased a minimum of 10% on August 15.

During the meeting a phone call was received from Bill Diggs of St. Regis, and he stated that he felt his company would also support this advance in prices. No other comment was made by the representatives in attendance.

The following companies were represented:

Inland Container	Union Bag
Dixie Container	Maxwell Bros.
Mead	H.&D.
Mengel	Weyerhaeuser
Continental Can	International Paper

Not in attendance:

Owen-Illinois	Container Corp.
Carolina Container	St. Regis
Tri-State	Mead-Atlanta

We held a sales meeting today in Atlanta of the Atlanta sales personnel, and the price increase procedure was outlined in full.

312. In August 1959, a meeting of representatives of some corrugated container manufacturers was held at the Raleigh Hotel in Richmond, Virginia. David B. Orcutt, West Virginia's District Sales Manager for the Richmond District, invited to the meeting a representative of each manufacturer that he believed was then supplying corrugated containers to Hygrade Packing Corporation. In response, representatives of Continental, Dixie, Miller, and Richmond Container Corporation, which companies, with the exception of Continental, were then supplying corrugated containers to Hygrade, met at the Raleigh Hotel, as aforesaid. Sometime previously, West Virginia had publicly announced a general increase in its corrugated container prices of approximately 10%. Some of Hygrade's suppliers named had been advised by Hygrade that West Virginia had reduced its prices to Hygrade, and had inquired of West Virginia as to whether that report was correct in view of West Virginia's previously announced price increase policy. The meeting was called to answer these inquiries at one time. At this meeting, Mr. Piemonte, of West Virginia, explained to those present that West Virginia had not changed its previously announced general policy, but that when it had negotiated with Hygrade, it was West Virginia's good judgment that its price to that customer should be reduced 5%. No statement was made at the meeting as to what any other suppliers of corrugated containers to that customer intended to do.

314. In 1960 or 1961, A. S. Clay, of Container Corporation, was told by the purchasing agent at the Drexel Furniture Company that Drexel had been charged prices by other suppliers which were lower than prices charged by Container Corporation. Clay requested and received from competitors information

as to the prices charged Drexel, which differed from information which Clay had received from Drexel. Subsequently, Clay asked employees of Tri-State, Owens-Illinois, and he believes International, if they had recently reduced prices to Drexel, and Alan McDonald of Tri-State said that he had reduced his prices to Drexel by roughly 3%. Because of this price competition, Clay had lost a great deal of his business in this account. Clay expressed his intention to place his prices in a competitive position based on information given him by the purchasing agent. Subsequently, Clay reduced his prices to Drexel 5%.

315. On August 8, 1961, Robert Groner, Jr., then Regional Sales Manager of the Southern District for Continental, advised Continental's district sales managers, including Continental's New Orleans Sales Manager, that lists containing the names of customers notified of a general 10% price increase "should be compiled and should be circularized fully, since this can be made public information." On August 11, 1961, David J. Bloom, a sales manager for Mead at its Atlanta, Georgia, plant, received from Continental's New Orleans sales office such a list. Bloom had not requested the list.

316. In or about February 1962, H. L. Mitchell of Dixie and representatives of Miller, Albemarle, Continental and West Virginia met in Mitchell's office, at the latter's invitation, after the paper mills had announced a price increase for linerboard, the basic raw material for corrugated containers. Mitchell assumes he made inquiry as to whether the others had increased, or were increasing, their prices to recover these increased costs. Prior to the meeting, Continental had increased its container prices and had announced that fact to its customers, and Continental's representative at the meeting so stated. Also, prior to the

meeting, West Virginia had made the decision to attempt to increase prices of containers to recover such increased cost, and its representative so stated at the meeting. "The meeting broke up as if it had not started." At about this same time, the other defendants attempted to increase prices in varying amounts to some corrugated container customers in an effort to recover their increased costs of linerboard.

317. H. L. Mitchell of Dixie believed that after some competitors had discontinued giving and receiving the most recent price charged or quoted to specific customers, the prices of corrugated containers, in some instances, deteriorated 40 per cent simply for lack of communication.

318. David B. Orcutt, Jr., was the representative of West Virginia who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, West Virginia had decided to attempt to increase its prices sufficiently to recover the increased cost of linerboard, as previously announced by the linerboard mills, and Orcutt stated at the meeting that West Virginia personnel had been instructed to do so. Orcutt did not know whether the other defendants whose representatives attended the meeting attempted to increase their prices.

319. Robert Groner, Jr., and Jehan B. Johnson were the representatives of Continental who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Prior to the meeting, Continental had publicly announced an increase in prices of its corrugated containers in order to absorb the increased cost represented by the rise in the price of linerboard. Since Continental's price increase could not hold if its competitors did not increase their prices, Johnson was interested in knowing what his competitors were doing or had been doing.

320. Harold P. Kyle and William M. Noftsinger were the representatives of Miller who attended the meeting in the office of Mitchell, President of Dixie, described in Finding 316. Kyle's purpose in attending the meeting was to learn his competitor's attitude toward passing on to customers the increase in the cost of linerboard.

321. Robert Groner, Jr., representative of Continental, on or about June 30, 1961, at a meeting of the Fibre Box Association attended by one or more of the other defendants and the Fibre Box Association's counsel, delivered a speech in which he stated Continental's intention to abide by the antitrust laws. Groner announced certain of Continental's sales policies, and stated that Continental would attempt to sell its product at a profit. He noted that one of the causes of unprofitable pricing was the deception practiced on salesmen by purchasing agents when those purchasing agents were asked the price which they were currently paying for corrugated containers. He said that, in view of this deception, his company would endeavor to determine the most recent price charged to a new customer before quoting blindly. Groner's speech made no reference to specific customers. Groner said that "anyone who has any real or imaginary problems with our firm can call me," and stated that such conversations would be "strickly [sic] legal according to the interpretation of the law by Malcolm White [Whyte]," the General Counsel of the Fibre Box Association.

322. Anthony J. Bagley met with competitors in the office of Herbert Mitchell, President of Dixie, on at least three occasions and discussed the price level of corrugated containers in the Richmond, Virginia, area. There is no evidence when these meetings occurred nor that any other defendant was present.

323. On various dates between July 24, 1961, and August 31, 1961, Continental, Container Corporation, Crown Zellerbach, Mead, Owens-Illinois, Union-Camp and West Virginia publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on September 1, 1961, and Inland and St. Regis publicly announced general increases in varying amounts in their respective prices of corrugated containers to take effect on August 15, 1961. Each of the defendants attempted to increase its prices to the majority of its corrugated container customers, and succeeded in increasing prices to some of its customers in varying amounts. Continental had publicly announced its price increase prior to August 11, 1961. On August 24, 1961, Robert Groner, Jr., attended a Fibre Box Association meeting at which one or more of the defendants were present. Groner, who had a duty to gather market information for Continental, reported to his superior that "the feeling at this meeting was that the price increase . . . would probably hold." Groner instructed his district sales managers to make no deviations from Continental's previously announced increase without specific permission.

324. On one occasion, when Container Corporation received from Continental the most recent price which Continental had charged to a specific customer, Container Corporation analyzed Continental's price against Container Corporation's costs, determined that Container Corporation could charge less and still have a comfortable profit, and cut Continental's price. An employee of Continental complained to an employee of Container Corporation, but Continental continued giving price information to Container Corporation when such information was requested.

325. After a zone meeting of the Fibre Box As-

sociation, Barnell E. Roberts, Sales Manager of Inland's Macon, Georgia, plant, stated in the presence of several representatives of other defendants that he was going to increase his prices to Spring Cotton Mills. Roberts said nothing further. Roberts had not decided to make this announcement prior to making it. No comment was made by any of the others present regarding the announcement. Roberts sought no agreement, and stated that he would make no agreement. He expected that the others would not increase their prices. They did not. Inland did and lost the business. Later Inland reduced its prices to get back into the account.

326. In or about 1961, Weyerhaeuser, at the request of Continental, furnished Continental the most recent price that Weyerhaeuser had charged a certain account. After obtaining this information, Continental quoted a more attractive price to this account and took the business from Weyerhaeuser. Weyerhaeuser naturally was unhappy that it no longer had the business. Subsequently, upon inquiry from Weyerhaeuser, Continental confirmed that it had taken the account at a lower price. Weyerhaeuser thereafter attempted to regain the account.

DISCUSSION

The issues for determination are whether, from the facts found, (1) the defendants, during the period covered by the Complaint, had an understanding or agreement to exchange information as to the most recent prices charged or quoted to specific customers, and (2) if so, during said period, did the defendants have a further understanding and agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers or minimizing the

amount of any price reductions to be offered to such customers. It is the contention of the plaintiff, if these two issues are resolved in the affirmative, that the concerted and reciprocal conduct of the defendants constitutes, as a matter of law, a combination or conspiracy in the restraint of trade in the sale of corrugated containers within the meaning of Section 1 of the Sherman Act.¹ If an unlawful trade conspiracy has otherwise been established, a further question is presented as to whether the provisions of the consent decree entered in the case of "United States of America, Plaintiff, against National Container Association, et al., Defendants," in the United States District Court for the Southern District of New York, Civil Action No. 8-318, constitutes a defense available to any of the defendants.

The plaintiff concedes that there is no evidence of an express agreement or understanding between or among any of the defendants to either exchange price information or to restrict price competition. It is contended, however, that, from the facts found, the Court may infer an agreement to exchange information as to the price most recently quoted or charged for corrugated containers, and that from such agreement, together with such facts, the Court may infer an agreement to restrict price competition. Since it is well established that a conspiracy can be inferred or implied from a concerted and collaborative course of action, plaintiff correctly asserts that an explicit agreement is not a necessary part of a Sherman Act

¹ Section 1 of the Sherman Act, 15 U.S.C. § 1, provides, in pertinent part, as follows:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal . . ."

conspiracy. *United States v. General Motors*, 384 U.S. 127 (1966).

Unquestionably, during all or a part of the period covered by the Complaint, each of the defendants furnished to other defendants, upon request, the most recent price charged or quoted to specific customers for corrugated containers, and this was done with the implied understanding that by furnishing such information each defendant would, upon request, receive similar information. The evidence also permits the inference that each of the defendants knew that this practice was engaged in to some extent by other defendants. Since each defendant gave price information to other defendants with the expectation that the same kind of information would be furnished by the competitor, reciprocally, when requested, the plaintiff contends that a combination and conspiracy has been proved. The defendants, on the other hand, earnestly contend that the uncontested facts negate any inference of an agreement.

The Court is of the opinion that the plaintiff has failed to sustain its burden of proving facts from which an agreement to exchange price information may be inferred. Before determining the price to be quoted to a specific purchaser for corrugated containers, each defendant was naturally interested in all pertinent marketing information applicable to such account, and it was important to each manufacturer to have accurate information as to the price alternatives available to the purchaser. Usually, such information was obtained from the defendants' own records of prior sales, or from the purchaser involved. However, on occasions, purchasers furnished manufacturers with incomplete, inaccurate or misleading information as to prices offered by competing suppliers, and it was only on these occasions that a

competitor was consulted with respect to price information. The extent and frequency with which such information was requested or furnished varied among the plants and customers of each of the defendants. The defendants were at all times free to request from or furnish to competitors, or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was the individual decision of each defendant. At various times during the period covered by the Complaint, some of the defendants discontinued the practice altogether. Price information was furnished only in response to a specific request therefor, and was never volunteered. The price communication among the defendants was infrequent, since the usual means for obtaining such information was from a defendant's own records or from a customer. The undisputed fact that each defendant "usually" furnished price information on request disproves any agreed requirement that such information would always be furnished. There was a lack of uniformity in the substance and scope of price information furnished. Sometimes it was furnished in terms of end prices, and sometimes in terms of board levels. Some defendants furnished it both ways, while others furnished it in terms of an end price only. Some defendants furnished only a price which had been charged to a customer in a consummated sale, while others made no distinction between consummated sales and prices previously quoted.

The conceded freedom of each defendant to request from or furnish to competitors, or not request from or furnish to competitors, price information on corrugated containers, is the very antithesis of an agreement. Proof of a course of conduct by the defendants, or parallel business behavior, does not necessarily

require an inference or conclusion that a conspiracy actually existed. *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954). The most that can be said about the conduct of the defendants in exchanging price information is that on *infrequent* occasions each of the defendants, during various periods, felt free to call upon competitors to *verify* price information given by purchasers, and by receiving such information, felt compelled to give similar information upon request. Since this was done with no regularity, and each defendant was at all times completely free to either furnish or not furnish such information, it cannot be said that the existence of any agreement or conspiracy should be inferred.

Even if the mere giving and receiving of price information could support an inference of an agreement or conspiracy to do so, this alone would not be a violation of the Sherman Act. The plaintiff concedes that if it had only charged in the Complaint that the defendants had agreed to exchange price information, it would have no case, and that the Complaint would be subject to dismissal. Thus, the plaintiff has the additional burden of showing that from such inferred agreement, the Court should further infer that there was an agreement to use such exchanged price information for the purpose and with the effect of maintaining substantially identical price quotations to specific customers, or minimizing the amounts of any price reductions to be offered to such customers.

In arguing that a preponderance of the evidence establishes that the defendants combined and conspired to exchange most recent prices charged or quoted to specific customers for the purpose and with the effect of maintaining identical price quotations to those customers, or minimizing the amount of any re-

duction in price to be offered, plaintiff points to the stipulated evidence that each defendant considered it beneficial to have the most recent prices charged or quoted to specific customers for corrugated containers by its competitors; that the price information thus obtained was utilized in making the determination as to what price would be quoted to the customer; that one of the defendants felt that such price information was important to the defendants to keep the market stable; that most defendants felt that such price information was needed to maintain prices and minimize any price competition that might otherwise exist; that some defendants hinted that the price information was used to get the best possible prices from their customers, and other evidence of similar import. The plaintiff also contends that the asserted freedom by recipients of price information to use their own discretion in setting prices is meaningless for the reason that a decision to quote a price other than identical, or marginally under, the price of the competitor, would be wholly irrational, if the recipient was interested in sharing the business. Plaintiff further asserts that if the direct evidence does not establish that the practice of the defendants in exchanging most recent prices charged or quoted to specific customers had the purpose and necessary effect of stabilizing prices and minimizing competition among defendants, the "other conduct" evidence relating to various defendants (Findings 302 through 326) makes such conclusion inescapable. It is not contended, however, that this "other conduct" evidence establishes a separate violation of the antitrust laws.

The record is barren of any evidence that any of the defendants were ever committed to a common scheme in fixing prices to be charged or quoted a customer. On the contrary, it is conceded that the

corrugated container business was highly competitive, and that each defendant, in deciding whether to seek a particular order from a particular customer, and in determining the price to be charged or quoted, exercised its own business judgment. Purchasers frequently shifted their business from one supplier to another. Each defendant was constantly losing old accounts and acquiring new ones. Defendants' business records indicate independent and unrestricted price competition. Many factors other than the latest price quoted or charged entered into individual decisions as to whether to seek a particular order from a particular customer, and in determining the price to be quoted (Findings 22 and 23).

Plaintiff does not challenge the right of the defendants to obtain and use reliable market information for the purpose of maximizing sales and profits, but argues that cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose an undue restraint upon free competition protected by the Sherman Act. However, this argument does not take into account the fact that, while engaged in *such* "cooperative and reciprocal action," each defendant exercised its own business judgment with respect to the desirability of an order from a particular customer, or the fact that the price to be quoted, whether higher, lower, or the same, was the individual decision of each defendant. There is no evidence that any defendant ever discussed with any other defendant the desirability, the frequency, or the consequences of requesting or furnishing, or failing to request or furnish, price information, or the action to be taken with respect to such information. This freedom of action reserved by each defendant completely refutes the charge that it was the common purpose of the defendants, in exchange-

ing price information, to maintain prices which would be substantially identical with the prices of another, to minimize price reductions, or otherwise make concerted use of any price information after it had been obtained. The exchange of most recent price information is not illegal merely because it enables the recipient to compete on the basis of fuller market information, so long as each competitor, although taking into account the price information received from a competitor, independently established its own price.

Neither has the plaintiff proved its charge that the exchange of most recent price information had the *effect* of maintaining substantially identical price quotations to specific customers, or minimizing the amount of any price reductions to be offered to such customers. No evidence was adduced by the plaintiff from any corrugated container customer in the South-eastern United States showing, or in any way indicating, that prices charged by any one or more of the defendants was stabilized or harmonized by the exchange of price information, or indicated any uniformity or parallelism of prices between or among two or more of the defendants. Actually, the uncontested statistical data in the record demonstrates the absence of any uniformity, harmony, stability or parallelism in prices. Price trends varied widely among the several defendants and among the plants of the individual defendants, both as to direction and as to degree. While the price trends of some plants were moving upward, those of other plants were moving downward. It has been stipulated that during the period covered by the Complaint, the price trend of all corrugated containers was downward, and was substantially the same at the end of the period as at the beginning thereof, in contrast to the increase in prices for the same period for paper and allied products

generally. Further, during the same period, labor rates, machinery and equipment costs, and other production costs, for both corrugated containers and containerboard, increased. Another important factor is that the price information received from other defendants was taken into account and utilized by each defendant in individually determining the price to be charged or quoted by it in the same manner, to the same extent, and with the same effect as the similar price information which it usually and ordinarily received from purchasers. Consequently, if purchasers had always given accurate and reliable information, there would have been no necessity for calling upon a competitor for verification, and the price structure in the corrugated container business would have been the same as if no price information had ever been exchanged with competitors. It is difficult to understand how the infrequent exchange of price information between competitors for verification purposes could constitute an unlawful conspiracy in restraint of trade when the identical price structure would have been maintained, free of any illegality, had customers been accurate and reliable in reporting the same information. In all instances, the price information, from whatever source, merely permitted the recipient to make its independent pricing decision based on this and numerous other factors. The gathering of price information, from whatever source, which enables "sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not act as they choose, cannot be held to be an unlawful restraint upon commerce . . ." *Cement Manufacturers Protective Ass'n. v. United States*, 268 U.S. 588, 603, 604 (1925).

In support of its claim that proof of an unlawful conspiracy has been established, plaintiff relies prin-

cipally upon *American Column and Lumber Co. v. United States*, 257 U.S. 377 (1921) and *United States v. American Linseed Oil Co.*, 262 U.S. 371 (1923). The defendants contend that the facts in this case more nearly resemble the facts in *Maple Flooring Assn. v. United States*, 268 U.S. 563 (1925) and *Cement Mfrs. Assn. v. United States*, 268 U.S. 588 (1925), and that these decisions should be controlling. We must, of course, "in considering the application of the rule of decision in these cases to the situation presented by this record," bear in mind that "each case arising under the Sherman Act must be determined by the particular facts disclosed by the record," and that prior opinions in such cases "must be read in light of their facts and of a clear recognition of the essential differences in the facts of those cases, and in the facts of any new case to which the rule of earlier decisions is to be applied." *Maple Flooring Assn. v. United States, Supra*, at 579.

In *American Column*, the defendant Association adopted a plan which required each member to make the following six reports to the Secretary:

1. A *daily* report of all sales actually made, with the name and address of the purchaser, the kind, grade and quality of lumber sold and all special agreements of every kind, verbal or written with respect thereto. "These reports are to be exact copies of orders taken."
2. A *daily* shipping report, with exact copies of the invoices, all special agreements as to terms, grades, etc. The classification shall be the same as with sales.
3. A *monthly* production report, showing the production of the member reporting during the previous month, with the grades and thickness classified as prescribed in the 'Plan.'
4. A *monthly* stock report by each member, showing the stock on hand on the first day of

the month, sold and unsold, green and dry, with the total of each kind, grade and thickness.

5. Price-lists. Members must file at the beginning of each month price-lists showing prices f.o.b. shipping point, which shall be stated. New prices must be filed with the association as soon as made.

6. Inspection reports. These reports are to be made to the association by a service of its own, established for the purpose of checking up grades of the various members and the "Plan" provides for a chief inspector and sufficient assistants to inspect the stocks of all members from to time. (257 U.S. at 394, 395).

All the reports by members were "subject to complete audit by representatives of the association," and any member who failed to report was not to "receive the report of the secretary," and "failure to report for twelve days in six months" caused the member "to be dropped from membership." The Secretary was required to send to each member a "monthly summary showing the production of each member for the previous month," a "weekly report . . . on all sales . . . giving each sale and the price, and the name of the purchaser," and "a monthly report, showing the individual stock on hand of each member and a summary of all stocks, . . . sold and unsold." Additionally, not later than the 10th of each month the Secretary was required to "send a summary of the price-lists furnished by members, showing the prices asked by each. . . ." Membership meetings were held once a month for the purpose of affording "opportunity for the discussion of all subjects of interest to the members." (257 U.S. at 395, 396, 397).

The record disclosed a concerted, systematic effort, directed by the Secretary and participated in by members of the Association, to cut down production and increase prices. While the plan was in effect,

"the prices of the grades of hardwood in most general use were increased to an unprecedented extent. . . ." For example, in one year, "the increases in prices of varieties of oak [ranged] from 33.3% to 296%"; gum increases ranged from "60% to 343%," and ash increases ranged from "55% to 181%." (257 U.S. at 409). The court is holding this concerted effort was unlawful, said:

Genuine competitors do not make daily, weekly and monthly reports of the minutest details of their business to their rivals, as the defendants did; they do not contract, as was done here, to submit their books to the discretionary audit and their stocks to the discretionary inspection of their rivals for the purpose of successfully competing with them; and they do not submit the details of their business to the analysis of an expert, jointly employed, and obtain from him a "harmonized" estimate of the market as it is and as, in his specially and confidentially informed judgment, it promises to be. This is not the conduct of competitors but is so clearly that of men united in an agreement, express or implied, to act together and pursue a common purpose under a common guide that, if it did not stand confessed a combination to restrict production and increase prices in interstate commerce and as, therefore, a direct restraint upon that commerce, as we have seen that it is, that conclusion must inevitably have been inferred from the facts which were proved. (257 U.S. at 410).

The opinion of the court in *American Column* rests squarely on the proposition that the purpose and effect of the activities of the members "were to restrict competition and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber by concerted action in curtailing production and in increasing prices. . . ." (257 U.S. at 412).

Obviously, the facts present in this case do not remotely resemble the facts in *American Column*. The defendants here were under no compulsion to give or receive price information, since each defendant was free at all times to do as he pleased in this regard. No defendant was privileged to audit the books of another defendant, nor to be furnished with other business details of their rivals. No fines or penalties were assessed for a failure or refusal to furnish price information, and there was no compulsion to *adhere* to the price requested or received. Price information was given and received on infrequent occasions, and related to only a small percentage of sales, as contrasted to disclosure of price information on all sales.

In *American Linseed Oil*, the other case relied upon by the plaintiff, twelve corporate defendants entered into an agreement, with provisions for financial forfeitures in the event of its violation, for the maintenance of a bureau to gather and distribute information among the members, including price list covering the production of members. Members agreed to furnish to the bureau a schedule of all prices and terms, and were required to report by telegraph all variations of prices, the names of prospective buyers, the point of shipment, the exact prices, terms and discounts, and other pertinent information relating to sales and prices. All such information was to be treated as confidential and concealed from buyers. The information thus gathered was made available to members through the statistical surveys by the bureau. It was provided that any subscriber who had offered his product to a prospective buyer who did not purchase should have the right to advise the bureau of the "unsuccessful offering or quotation," and to request the bureau "to bulletin all of its subscribers asking specific information regarding any quotation

or sale to such prospective buyer by any other subscribers. . . ." (262 U.S. at 385). Members were required to give the desired information. In holding that the plan, as operated by the defendants, constituted a violation of the Sherman Act, the court said:

The record discloses that defendants, large manufacturers and distributors—powerful factors in the trade—of commodities restricted by limited supplies of raw material (linseed), located at widely separated points and theretofore conducting independent enterprises along customary lines, suddenly became parties to an agreement which *took away their freedom of action* by requiring each to reveal to all the intimate details of its affairs. All subjected themselves to an autocratic Bureau, which became organizer and general manager, paid it large fees and deposited funds to insure their obedience. Each subscriber *agreed to furnish a schedule of prices and terms and adhere thereto*—unless more onerous ones were obtained—until prepared to give immediate notice of departure therefrom for relay by the Bureau. Each also agreed, under penalty of fine, to attend a monthly meeting and report upon matters of interest to be there discussed; to comply with all reasonable requirements of the Bureau; and to divulge no secrets.

With intimate knowledge of the affairs of other producers and obligated as stated, but proclaiming themselves competitors, the subscribers went forth to deal with widely separated and unorganized customers necessarily ignorant of the true conditions. Obviously they were not *bona fide* competitors; their claim in that regard is at war with common experience and hardly compatible with fair dealing. (262 U.S. at 389, 390). (Emphasis supplied).

Here again, the facts in *American Linseed Oil* are materially dissimilar to the facts in the case under

consideration. We have no agreement that took away "any freedom of action" of the defendants by *requiring* the furnishing of price schedules and terms, and *adherence* thereto; no agreement, under penalty of fine, to attend meetings and report upon matters of interest; and no agreement to comply with the requirements of any organization, or not to divulge any trade secrets. The opposite is true. As we have seen, each defendant was at all times free to exchange, or not to exchange, price information, and each price charged or quoted was the individual decision of each defendant.

Subsequent to the decision in *American Column* and *American Linseed Oil*, the Supreme Court, in *Maple Flooring Association v. United States*, 268 U.S. 563 (1925), and *Cement Mfrs. Ass'n. v. United States*, 268 U.S. 588 (1925), had occasions to again consider the legality of the dissemination of price information among competitors. In each of these cases, it was found that the conduct of the defendants did not have the purpose or effect of restraining trade.

In *Maple Flooring*, the corporate defendants organized a trade association for the purpose of (1) computing and distributing among the members "the average cost to association members of all dimensions and grades of flooring," (2) compiling and distributing among members "a booklet showing freight rates on flooring from Cadillac, Michigan, to and between five and six thousand points of shipment in the United States," (3) gathering statistics which were supplied, at frequent intervals, "by each member of the Association to the Secretary of the Association giving complete information as to the quantity and kind of flooring sold and prices received by the reporting members, and the amount of stock on hand, which

information [was] summarized by the Secretary and transmitted to the members without, however, revealing the identity of the members in connection with any specific information thus transmitted," and (4) conducting meetings "at which the representatives of members congregate and discuss the industry and exchange views as to its problems." There was no "agreement agreeing among the members of the Association either affecting production, fixing prices or for price maintenance." Members were "left free to sell their products at any price they [chose] and to conduct their business as they [pleased]." Although the Government claimed that the activities of the defendants "resulted in the maintenance of practical uniformity of net delivered prices as between the several corporate defendants," there was no evidence "to establish such uniformity," or "that any substantial uniformity in price had in fact resulted from the activities of the Association. . . ." Neither was there any "direct proof that the activities of the Association had affected prices adversely to consumers." Further, the undisputed evidence disclosed "that the prices of members were fair and reasonable, and that they were usually lower than the prices of non-members. . . ." (268 U.S. at 566, 567, 568).

In rejecting the Government's argument that the necessary effect of the activities of the defendants was to "bring about a concerted effort on the part of members of the Association to maintain prices at levels having a close relation to the average cost of flooring reported to members," and such activities "should be enjoined regardless of [their] actual operation and effect so far as price maintenance [was] concerned," the court stated:

We do not conceive that the members of trade associations become such conspirators merely

because they gather and disseminate information, such as is here complained of, bearing on the business in which they are engaged and make use of it in the management and control of their individual businesses; nor do we think that the proper application of the principles of decision of *Eastern States Retail Lumber Association v. United States* or *American Column & Lumber Co. v. United States* or *United States v. American Linseed Oil Company* leads to any such result. The court held that the defendants in those cases were engaged in conspiracies against interstate trade and commerce because it was found that the character of the information which had been gathered and the use which was made of it led irresistibly to the conclusion that they had resulted, or would necessarily result, in a concerted effort of the defendants to curtail production or raise prices of commodities shipped in interstate commerce. The unlawfulness of the combination arose not from the fact that the defendants had effected a combination to gather and disseminate information, but from the fact that the court inferred from the peculiar circumstances of each case that concerted action had resulted, or would necessarily result, in tending arbitrarily to lessen production or increase prices.

Viewed in this light, can it be said in the present case, that the character of the information gathered by the defendants, or the use which is being made of it, leads to any necessary inference that the defendants either have made or will make any different or other use of it than would normally be made if like statistics were published in a trade journal or were published by the Department of Commerce, to which all the gathered statistics are made available? The cost of production, prompt information as to the cost of transportation, are legitimate subjects of enquiry and knowledge in any industry. So likewise is the production of

the commodity in that industry, the aggregate surplus stock, and the prices at which the commodity has actually been sold in the usual course of business. (268 U.S. at 584, 585).

Clearly, the information given and received by the defendants in this case was far more limited in scope, and with less frequency, than in *Maple Flooring*. Under such circumstances, together with the failure of the plaintiff to offer any proof that the communications actually restricted price competition, or that the exchanged price information was used differently from like information gathered from other sources, plaintiff's challenge to defendants' conduct must fail.

In *Cement Manufacturers*, decided the same day as *Maple Flooring*, the court held an Association of Cement Manufacturers, organized for the purpose of exchanging trade statistics, to be legal, since the evidence did not show that the arrangement had the purpose or effect of restricting trade. The avowed purpose for organizing the Association was to collect and disseminate *accurate* information "to protect each manufacturer against misrepresentation, deception, and imposition. . . ." The members were required to report to the Secretary of the Association "all specific job contracts," including "name and address of the purchaser," the "amount of cement required," and the "price and delivery point," which was in turn communicated to the other members. (268 U.S. at 591, 596).

In reversing the trial court, which held that the activities of the defendants tended to limit the amount of cement produced and distributed, and to produce uniformity in price, thus imposing a restraint of commerce, the court stated:

"From these various activities of the defendants, the Government deduces a purpose to control the price of cement, which it is charged was

to be accomplished by the control of the supply of cement on the market and by intimate association of the defendants in the exchange of information and a ready means of quoting a delivered price at any point. Cement was to be kept from the market by the use of the specific job contract accompanied by the systematic gathering and reporting of information with reference to the specific jobs and the amount of cement required for their completion. The two essential elements in the conspiracy to restrain commerce charged therefore are (a) the gathering and reporting of information which would enable individual members of the Association to avoid making deliveries of cement on specific job contracts which by the terms of the contracts they are not bound to deliver, and (b) *the gathering of information as to production, price of cement sold on specific job contracts* and transportation costs, not differing essentially from similar information disseminated by the Maple Flooring Association, which is the subject of the opinion in *Maple Flooring Association v. United States*, decided today, *ante* p. 563.

That a combination existed for the purpose of gathering and distributing these two classes of information is not denied. That a consequence of the gathering and dissemination of information with respect to the specific job contracts was to afford to manufacturers of cement, opportunity and grounds for refusing deliveries of cement which the contractors were not entitled to call for,—and opportunity of which manufacturers were prompt to avail themselves—is also not open to dispute. We do not see, however, in the activity of the defendants with respect to specific job contracts any basis for the contention that they constitute an unlawful restraint of commerce. The Government does not rely on any agreement or understanding among members of the Association that members would either make use of the specific job contract, or that they

would refuse to deliver 'excess' cement under specific job contracts. *Members were left free to use this type of contract and to make such deliveries or not as they chose*, and the evidence already referred to shows that in 1920 padded specific job contracts were cut down something less than two-thirds of the total amount of the padding, as a result of the system of gathering and reporting this information. It may be assumed, however, if manufacturers take the precaution to draw their sales contracts in such form that they are not to be required to deliver cement not needed for the specific jobs described in these contracts, that they would, to a considerable extent, decline to make deliveries, upon receiving information showing that the deliveries claimed were not called for by the contracts. Unless the provisions in the contract are waived by the manufacturer, demand for and receipt of such deliveries by the contractor would be a fraud on the manufacturer; and, in our view, *the gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, which information they are free to act upon or not as they choose, cannot be held to be an unlawful restraint upon commerce*, even though in the ordinary course of business most sellers would act on the information and refuse to make deliveries for which they were not legally bound. (268 U.S. at 602, 603, 604). (Emphasis supplied).

Similarly in this case, the evidence establishes that the communication of price information was often, if not exclusively, for the purpose of verifying information obtained from buyers, and that defendants were at all times free to use the information as they chose. Equally important, the rationale of *Cement Manufacturers* is inapplicable here as the evidence fails to show that price information obtained by any

defendant from a competitor had any effect on prices, except for its natural influence on individual action.

After a reading of all the cases, those cited by the plaintiff as well as those cited by the defendants, and comparing the facts in each case with the record in this case, the Court is led to the inescapable conclusion that no court has yet held communications of price information similar to those here at issue to be a violation of the Sherman Act. No express agreement to restrict price competition can be found in the record, and none can be inferred when every price decision by every defendant was its own individual decision, unrestricted by agreement. This is particularly true in view of the vigorous and continuous price competition of the defendants, and the admitted price structure in the corrugated container industry.

Little need be said about the other issues. The Government concedes that the activity of the Fibre Box Association is protected by *Maple Flooring*. The 1940 consent decree, even if relied upon by some or all of the defendants, is of little consequence. It does not legalize unlawful conduct. It simply permits the gathering and dissemination of information as to the cost of manufacture of corrugated containers, the actual price which the product has brought in past transactions, etc., so long as such activities are carried on without "reaching or attempting to reach any agreement or any concerted action with respect to price or production of such containers." The plaintiff concedes that an exchange of price information without an agreement to restrict price competition would be lawful, and the defendants admit that an exchange of such information, coupled with an agreement to restrict price competition, would be unlawful. In any event, since no agreement has been found to either exchange price information, maintain substantially

identical price quotations to specific customers, or to minimize the amount of any price reductions to be offered to such customers, the consent decree has no relevancy.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.

2. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers.

3. The evidence in this case does not prove or support an inference that there was an agreement or understanding among the defendants, or any of them, to exchange, or to furnish upon request, information as to the most recent price charged or quoted to specific customers for corrugated containers, for the purpose of maintaining substantially identical price quotations to specific customers or minimizing the amount of any price reductions to be offered to such customers.

4. The requesting and furnishing of price information by the defendants did not have the effect of eliminating, reducing, minimizing or restricting price competition.

5. The plaintiff is not entitled to the injunctive relief sought in the Complaint.

6. The defendants are entitled to a judgment dismissing the Complaint with prejudice.

A judgment will be entered accordingly.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

APPENDIX B

**In the United States District Court For the Middle
District of North Carolina Greensboro Division**

JUDGMENT

No. C-180-G-63

UNITED STATES OF AMERICA, PLAINTIFF,

v.

CONTAINER CORPORATION OF AMERICA; ALBEMARLE PAPER MANUFACTURING COMPANY; CAROLINA CONTAINER COMPANY; CONTINENTAL CAN COMPANY, INC.; CROWN ZELLERBACH CORPORATION; DIXIE CONTAINER CORPORATION; DIXIE CONTAINER CORPORATION OF NORTH CAROLINA; INLAND CONTAINER CORPORATION; INTERNATIONAL PAPER COMPANY; THE MEAD CORPORATION; MILLER CONTAINER CORPORATION; OWENS-ILLINOIS GLASS COMPANY; ST. JOE PAPER COMPANY; ST. REGIS PAPER COMPANY; TRI-STATE CONTAINER CORPORATION; UNION BAG-CAMP PAPER CORPORATION; WEST VIRGINIA PULP AND PAPER COMPANY; AND WEYERHAEUSER COMPANY, DEFENDANTS.

This cause came regularly on for trial before the Court without a jury, and was duly submitted for consideration and decision, and the Court, after due deliberation, having on the 31st day of August, 1967, filed herein its Findings of Fact and Conclusions of Law;

Now, therefore, pursuant to said Findings of Fact and Conclusions of Law filed herein, it is

Ordered, adjudged and decreed that the injunctive relief sought by the plaintiff be, and same hereby is, denied, and that the Complaint be, and same hereby is, dismissed with prejudice.

It is further ordered that each party bear its own costs.

EDWIN M. STANLEY,
United States District Judge.

AUGUST 31, 1967.

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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1968

UNITED STATES OF AMERICA, Appellant,

v.

CONTAINER CORPORATION OF AMERICA, et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM

SIMPSON THACHER & BARTLETT
Of Counsel

**HUNTON, WILLIAMS, GAY,
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IN THE
Supreme Court of the United States

October Term, 1967

No. 1064

UNITED STATES OF AMERICA,

Appellant,

v.

CONTAINER CORPORATION OF AMERICA, *et al.*

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1(c), of the Rules of this Court, appellees move that the judgment of the district court be affirmed on the ground that the case does not present any substantial question of law or fact for determination here. The case concerns only the trial court's application of well known principles from this Court's decisions to the particular undisputed facts of this industry.

Statement

This is a direct appeal from the final judgment of the district court, after trial, dismissing the complaint of appellant the United States under Section 1 of the Sherman Act. The district court (Edwin M. Stanley, Chief Judge) found that the government had failed to prove any agreement or conspiracy to restrict price competition. It further found that the conduct of the defendants did not have the effect of eliminating, reducing, minimizing or restricting price competition.

The Complaint

The government's complaint, against 18 of the 51 manufacturers of corrugated containers in the Southeastern United States, charges a combination and conspiracy "to exchange among themselves information respecting prices that they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition", in violation of Section 1 of the Sherman Act (Complaint, para. 11).

The Proceedings Below

Substantially all of the facts were stipulated before trial. This was feasible because the government had previously conducted a very extensive Grand Jury investigation (from which no indictment resulted), and had taken pretrial depositions of 34 employees of the various defendants. Thereafter, stipulations of fact were worked out over a period of many months, under pretrial supervision of the court pursuant to modern pretrial rules, and only after the government had ample opportunity to verify each of the facts. Not only are the findings of fact below based on these stipulations and other uncontroverted evidence but almost all of the findings had been agreed to by the parties after many conferences. (See "Defendants' Proposed Findings of Fact and Restatement of Certain Findings of Fact Proposed by the Plaintiff," dated May 2, 1966,¹ which reveals the ex-

¹ Hereinafter "D.P.F.". In addition:

"J.S." refers to appellant's Jurisdictional Statement and Appendix.
 "F." refers to the district court's numbered findings of fact.
 "CX" refers to exhibits admitted by agreement as court's exhibits.
 "Tr." refers to the transcript of proceedings in the district court.
 "PX" refers to government's exhibits and "DX" refers to defendants' exhibits.

tent to which the parties agreed to the findings proposed and subsequently entered).

The Facts

The conduct upon which the complaint is based is simply this: For longer than anyone can remember, members of this industry have, on occasion, requested from a competitor information as to the latter's most recent price to a specific customer for specific corrugated containers, and usually—not always—the information was furnished² (e.g., F. 117, 118). The need for such price communication arose from the fact that there are no published price lists for corrugated containers which are custom made to fit each of the multitude of products shipped in them, e.g., a container for each particular chair must fit exactly or it will scuff the surface (F. 5). The government agreed to a finding that in order to compete effectively in this industry, each defendant had a vital need for information as to the price alternatives available to its customer or a prospective customer (F. 19 (a); D.P.F. 25(a)).

Usually such information was obtained from the defendant's own records of its past sales to the customer or from the customer itself, as secret or closed bidding was not the practice of the industry; and purchasing agents, after receiving a price from one defendant, often solicited other defendants to meet or beat that price, which they did (F. 19, 29). On infrequent occasions, price information was requested from another defendant to verify the accuracy

² The right to cooperate in gathering and disseminating such information was expressly recognized in a 1940 consent decree in this industry (F. 44).

of a not-always-truthful purchasing agent's report of a competitor's lower price or as an aid in making informed pricing and marketing decisions (F. 30 and *e.g.*, F. 69).

From the single fact of such communications the government asked the district court to infer not only an agreement among the defendants to exchange price information,³ but also that the agreement had the purpose and effect of restraining price competition by maintaining substantially identical price quotations to specific customers or minimizing the amount of any price reductions to be offered to such customers.

It was flatly conceded by the government (Transcript of Conference with Attorneys, Dec. 20, 1965, pp. 36, 46) that it could not succeed merely by proving an agreement to furnish price information upon request, as such an agreement would not violate the antitrust laws, and that the government's case depended upon further proof of an agreement to restrict price competition.⁴

³ For semantic advantage, the government uses the term "exchange" of price information, although there is no evidence, and indeed no claim, that any defendant requesting past price information from a competitor ever advised that competitor as to the price which he (the requesting party) had charged or quoted or intended to charge or quote.

⁴ As part of a stipulation by which the defendants agreed to limit their proof at trial, the government stipulated what it was contending:

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information or to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer an agreement to exchange information as to the most recent quoted price for corrugated containers and that from such agreement, together with such facts, the Court may infer an agreement to restrict competition." (DX-1, p. 3)

The district court held that the government had failed to prove facts from which an agreement to furnish price information could be inferred (J.S. 128). Relying on stipulated facts and agreed findings, the court found: Each defendant was at all times free to request or furnish, or not request or furnish, information as to prices for corrugated containers, and whether to request or furnish such information was the individual decision of each defendant. The extent and frequency with which such information was requested or furnished varied among the defendants, and the information was not always furnished. Such price communication was infrequent,⁵ and at various times some defendants discontinued the practice altogether. There was also lack of uniformity in the substance and scope of the information furnished.⁶ (J.S. 110-11)

The government's argument below as to purpose and effect, as here, was that when a defendant obtained from another manufacturer information as to the latter's most recent price to a particular customer, competition was necessarily restricted because this information would permit the defendant to quote an identical price or, if it chose to cut the price (and there is not even a suggestion in the

⁵ For example, one defendant, International Paper, had only two to twelve telephone calls a month, including both requests for information and answering requests of others, while at the same time its salesmen were averaging 1,800 to 2,000 calls per month on customers and prospective customers (F. 158, 159).

⁶ For example, defendants Carolina (F. 99), Dixie of North Carolina (F. 135), Inland (F. 151(g)), Owens-Illinois (F. 212), St. Joe (F. 226), St. Regis (F. 242), Tri-State (F. 255) and Weyerhaeuser (F. 293) furnished price information only with respect to completed sales. Others sometimes furnished information as to prices quoted to a customer, but only after the quotation was in the customer's hands (e.g., F. 121).

evidence that there was any understanding that the price would not be cut), to minimize the extent of the price cut.

The government states the essence of its claim as follows: "Although the prices ultimately quoted reflected the individual decisions of each defendant, these decisions inevitably were influenced by the defendants' awareness of each other's most recent price quotations . . ." (J.S. 20). From this premise the government argued that the purpose and effect were unlawful when the information was received from a competitor, even though it had agreed to findings that each defendant's purpose was "to aid it in making informed pricing and marketing decisions" (*e.g.*, F. 76; D.P.F. A-12).

The district court found its answer to the government's argument from the undisputed facts and agreed findings, including the following:

a. Each defendant used price information obtained from a competitor in exactly the same way as similar information much more frequently obtained from the customer itself (*e.g.*, F. 91; see also F. 28).

b. "In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment", taking into account many factors other than the competitor's past price, including its own cost estimates, its production load or the existence of idle machine time, general market conditions, and a host of other factors" (F. 22; D.P.F. 28).

c. No defendant furnished any competitor any price information except in response to a specific request (F. 31; D.P.F. 37).

d. The corrugated container industry was "highly competitive" (F. 16; D.P.F. 22) and characterized by "vigorous and continuous" and "unrestricted" price competition (J.S. 127; F. 19).

e. Each defendant felt free to cut a past price received from a competitor (F. 37),⁷ and there was no agreement or understanding with respect to any price to be charged or quoted to any customer, irrespective of whether or not price information had been requested from or furnished by another defendant (F. 38).

f. "[I]n all instances the determination as to the price to be charged or quoted was its [each defendant's] individual decision" (F. 28; D.P.F. 34).

g. Every purchaser of corrugated containers had numerous sources of supply, both actual and potential. Customers generally did not shift suppliers except when offered a better price, and customers frequently did shift all or part of their business from one supplier to another (F. 17, 18; D.P.F. 23).

The government presented no evidence of any price ever charged any customer by any defendant. The defendants put in evidence over 1,000 contemporary business records, stipulated to be a representative sample of their files, which demonstrated vigorous price competition and price cutting with respect to thousands of transactions involving hundreds of customers (F. 19). This docu-

⁷ A price cut by one defendant often led to further cuts by other defendants (F. 19 (f)).

mentary evidence also established that purchasers freely furnished suppliers information as to price alternatives available to them in order to stimulate even greater price competition, and that the information had precisely that effect (see, *e.g.*, DX-250, 272, 283, 1000-08).

The defendants also adduced statistical evidence on this score (DX-5), which is charted in Defendants' Exhibit 6. A glance at these charts, based wholly on stipulated facts, will dispel any speculation that prices were stable or uniform; on the contrary, the statistics and charts demonstrate the most active price competition:

a. The long-term trend of corrugated container prices was downward, while costs and price levels generally were rising (F. 15).

b. The prices of each defendant, varied continuously, with no parallel in the price trends of the various defendants. As the district court found, the statistics demonstrate the absence of any general uniformity, harmony, stability or parallelism in prices, and price trends varied widely among the several defendants both as to direction and as to degree (F. 21).

c. The statistics and charts showed gains and losses of accounts for 14 of the defendants for the three latest years of the alleged conspiracy. A typical example is the experience of Container Corporation (F. 18(a)), which in 1960 had 3,132 customers. Of these, 1,209 had bought nothing from Container in 1959 and, by stipulation, these customers can be presumed to have been taken from competitors as a result of price cutting (F. 17). Moreover, 1,210 of Container's 1960 customers bought nothing from that

company in 1961, again presumably because of price cutting by competitors, as customers do not shift suppliers except on the basis of lower price.

Long before trial, the government was given the names of each of defendants' more than 10,000 customers of corrugated containers in the Southeastern United States (F. 20). The fact that not one was called as a witness by the government should preclude the government's unsupported speculation here as to what customers believed or thought or wanted.

The Question Presented

The question actually presented is solely one of the correct interpretation of the particular evidence in this case: Was the district court so clearly wrong, in finding that the circumstantial evidence relied upon by the government was inadequate to prove an agreement, combination or conspiracy to restrain commerce, that this Court should give the matter plenary consideration?

No question of substantive law is presented. The district court, fully understanding every proposition of law for which authority is cited in the Jurisdictional Statement, announced no novel doctrine of law; it merely made a straightforward application to the unique facts of this case of settled principles in this Court's prior decisions.⁸

⁸ In its Jurisdictional Statement the government cites several familiar decisions of this Court, *United States v. General Motors Corp.*, 384 U.S. 127 (J.S. 13, 20, 25); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (J.S. 13, 16, 20, 25); *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (J.S. 15); *United States v. Singer Manufacturing Co.*, 374 U.S. 174 (J.S. 17); and *United States v. Parke, Davis & Co.*, 362 U.S. 29 (J.S. 17). The defendants fully accept these authorities. The point is that the district court properly evaluated the evidence at bar as falling outside the rule of those cases.

Argument

Unless the requirement of a substantial question is to be dispensed with or satisfied merely by the government's unhappiness with a district court's fact-finding, this case is not worthy of plenary review. Because most of the findings were agreed to by the parties, and the remainder were based on stipulated evidence, it would take a most unusual review *de novo* for this Court to formulate new findings to accommodate the government's wholly theoretical argument, particularly since the government offered no evidence in support of the suppositions and hypotheses which are indispensable to the arguments made in the Jurisdictional Statement.

In essence, the government's legal argument is that the occasional furnishing of market information, in the circumstances of the unusual facts here, is illegal because it permits the recipient to make its admittedly independent marketing and pricing decisions on the basis of more accurate information as to past competitive prices (J.S. 20).

The government's argument was made and rejected in *Maple Flooring Mfgs. Assn. v. United States*, 268 U. S. 563 and *Cement Mfgs. Protective Assn. v. United States*, 268 U. S. 588, which distinguished the earlier decisions in *American Column & Lumber Co. v. United States*, 257 U. S. 377 and *United States v. American Linseed Oil Co.*, 262 U. S. 371, upon which the government relies here. (See the district court's discussion of these cases at J.S. 115-27.)

The decision of the district court was simply this: The infrequent furnishing of past price information to a com-

petitor, on the latter's request, with each party concededly making every price decision freely and in the exercise of its own discretion, comes within the rationale of *Maple Flooring*, where this Court said:

"Competition does not become less free merely because the conduct of commercial operations becomes more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction. . . . Restraint upon free competition begins when improper use is made of that information through any concerted action which operates to restrain the freedom of action of those who buy and sell.

"It was not the purpose or the intent of the Sherman Anti-Trust Law to inhibit the intelligent conduct of business operations, . . . enlightened by accurate information as to the essential elements of the economics of a trade or business, however gathered or disseminated." (268 U. S. at 583-84)

The district court also found that *Cement Manufacturers, supra*, supported defendants' position (J.S. 124-27). There, the gathering of information as to the price of cement sold on specific job contracts was held not to be illegal, because the association members were left free to make their own decisions. That case is particularly applicable to the conduct here of obtaining price information to verify reports from purchasing agents, who sometimes furnished suppliers with incomplete, inaccurate or misleading information as to a competitor's price (F. 30); *Cement Manufacturers* held that "the gathering and dissemination of information which will enable sellers to prevent the perpetration of fraud upon them, which information they are

free to act upon or not as they choose, cannot be held to be an unlawful restraint upon commerce . . ." (268 U. S. at 603-04).

The government cites *Interstate Circuit, Inc. v. United States*, 306 U. S. 208, but the government's present "parallel business practices" argument was rejected by this Court in the later case of *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U. S. 537, which dealt specifically with the question whether parallel conduct, as such, constituted combination and conspiracy under the Sherman Act, and held that it did not. *A fortiori*, this is so in the case at bar, where the conduct of the defendants was not parallel at all. And the independent self-interest which the government sees (J.S. 15) in the behavior of the defendants in *Theatre Enterprises* is found here in the agreed fact that in order to compete effectively for the purchaser's business each supplier vitally needed information as to that purchaser's price alternatives (F. 19(a); D.P.F. 25(a)).

It does not suffice for the government to refer to fragments of evidence relating to a few different defendants as though the whole related to each of the 18 defendants. In fact, as would be expected in an industry where past price information had occasionally been furnished on request for many years in reliance upon the 1940 consent decree (F. 43), the record actually contains a variety of entirely proper reasons for furnishing such information, no one of which is "completely irrational" as the government suggests.⁹ Moreover, the government agreed that

⁹ *E.g.*, some of the defendants, not all, "believed" they could not get information or that it was "unlikely" they could get information from a competitor on other occasions unless they usually furnished it; but to others, being asked the information gives "an insight as to who is actively competing for this particular piece-

each pricing official of each defendant considered that he could request or furnish information or not request or furnish information, and whether or not to do so was his individual decision (F. 35; D.P.F. 41).

There is no relevancy of "meetings of competitors" (J.S. 9-10) when the government admits that no agreements were made at such meetings (J.S. 10), and conceded at trial that it had not established that these meetings or any conduct thereat constituted an offense (Tr. 23). The complete irrelevancy of such meetings to the price communications in issue is established by the agreed finding that

"There is no evidence that any employee of any defendant ever discussed with any employee of any other defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failure to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any such information." (F. 34; D.P.F. 40)

The government asserts (J.S. 13) that the effect of price communication was to "eliminate the element of uncertainty . . . that can undermine . . . uniform pricing," and

of business" (CX-4, p. 123; CX-5, p. 287); or the information is furnished since it is routinely available from the customer (F. 19(b)); or the information is furnished out of the conviction that a buyer should not be able to perpetrate a fraud on his seller by deliberately giving out inaccurate or misleading information (CX-6, pp. 501-02). On these facts, and the relevant findings summarized by the district court (J.S. 109-11), the court concluded that any "implied understanding" or "expectation" (J.S. 109) did not constitute an agreement to furnish price information (J.S. 109).

thus to reduce price competition; yet the government offered no evidence of any uniform prices to any customer at any time, and the proof is that the element of uncertainty clearly did exist.¹⁰ In fact, the government agreed that "in many instances" a defendant obtaining information as to another defendant's most recent price to a specific customer quoted a lower price irrespective of whether the source of its information had been the purchaser or another supplier (F. 28; D.P.F. 34). The district court also found that, after obtaining information as to a competitor's price, defendants "often reduced their prices", whereas, "[a]bsent such price information, [defendants] often quoted prices higher than those recently charged or quoted by other suppliers" (F. 19(d), (e)).

The Jurisdictional Statement does not help its argument by ascribing to the district court a view that there was "cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices" (J.S. 20), when the district court made it clear by its statement and by its findings and conclusions that it was stating the government's argument, which it thereupon rejected as

¹⁰ It was stipulated that, as would be expected, a defendant regularly supplying a customer would "usually"—not always—price an order from that customer for additional containers on the same basis as the last previous order (F. 23). It was also stipulated that prices were subject to change whenever there was a change in any competitive or other market factor or condition (F. 23) and the evidence is that prices in fact frequently changed (F. 19, 21). Thus, receipt of information as to a past price, or even a recent quotation, gave no assurance that the competitor giving the information was currently asking that same price, or would do so in the future. The district court concluded that the evidence showed an absence of any general uniformity, harmony, stability or parallelism in prices and that price trends varied widely among the defendants both as to direction and as to degree (F. 21).

unsupported in fact (J.S. 113, 128).¹¹ It does not help the government to speculate on how customers might have testified (J.S. 17 n.12, 18, 22, 23), when it elected to call none as a witness. Nor does it help to assert, without citation and contrary to the evidence, that price cuts were "slight and occasional" or that there was "an artificially high price structure for the industry as a whole" (J.S. 14).

It is significant that the Jurisdictional Statement does not directly attack the findings of the district court. It does, however, nibble around the edges of some of the findings, and offers undocumented speculation that prices may have been above "competitive levels" and that the conduct of the defendants may have in fact limited or reduced price competition.

Neither rhetoric, speculation, nor unsupported assertions can obscure the controlling facts: that "in all instances the determination as to the price to be charged or quoted was its [each defendant's] individual decision" (F. 28); that "each defendant felt free to cut a most recent price received from a competitor" (F. 37); that a defendant "requested price information from other defendants in order to aid it in making informed pricing and marketing decisions" and that "Price information received . . . was taken into account and utilized . . . in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which is usually and ordinarily received from

¹¹ The same is true as to the assertions (J.S. 9, 21) of a purpose to stabilize prices and minimize price competition, for the government offered no evidence of stabilized prices or minimized competition to contradict the overwhelming evidence of vigorous competition and unstable prices.

purchasers . . . " (F. 76, *see also* F. 91, 102, 110, 123, 141, 151(d), 169, 189(b), 202, 214, 229, 244, 256, 268, 281, 295). Prices were not stabilized. There was no price uniformity. Price cutting was common. (F. 18, 19(f), 21)

Conclusion

The decision below was clearly correct, and it is manifest that the question on which the decision of this cause depends is so unsubstantial as not to need further consideration. Accordingly, the judgment of the district court of August 31, 1967 should be affirmed.

Dated: April 4, 1968.

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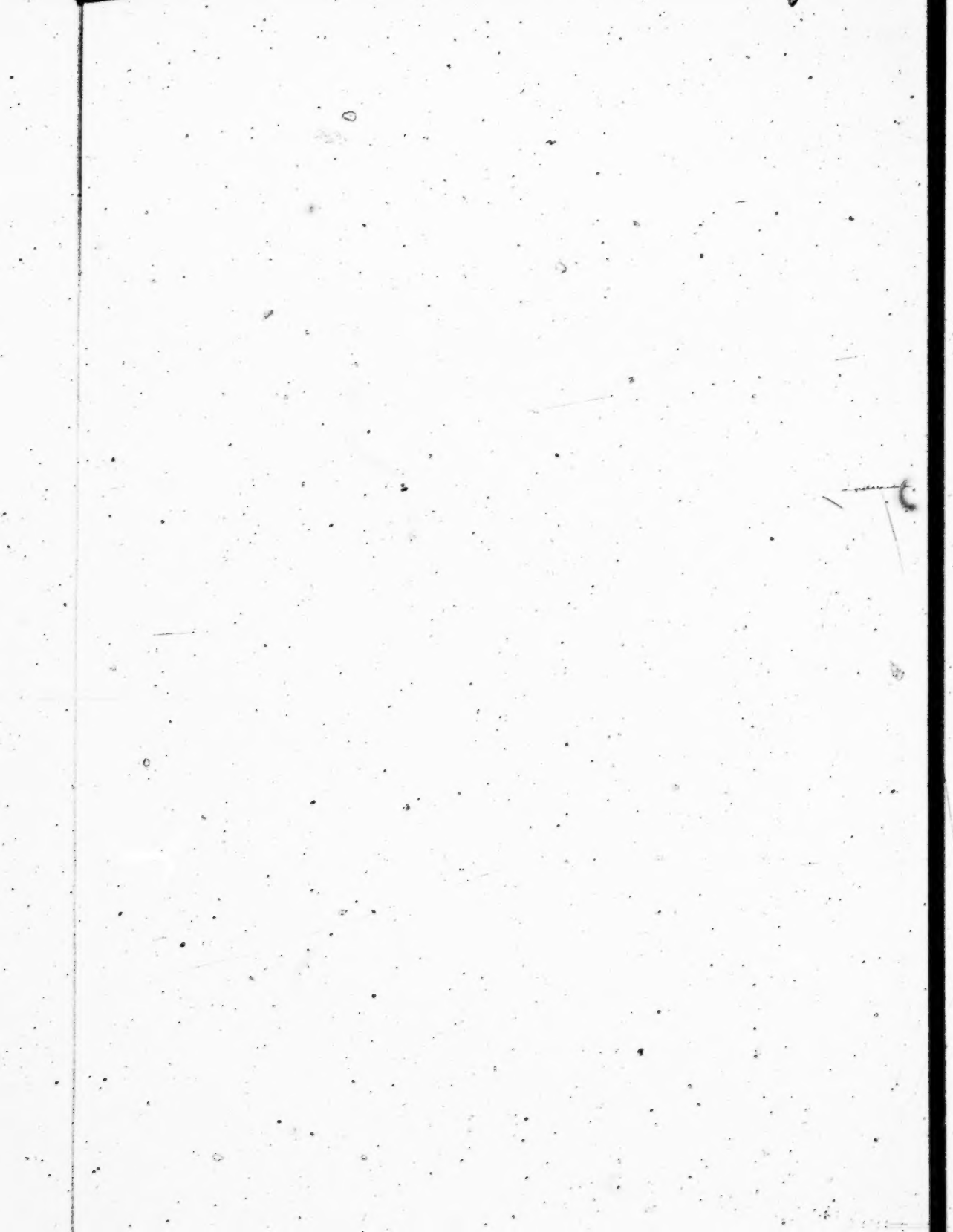
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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA, APPELLANT

v.

CONTAINER CORPORATION OF AMERICA, ET AL,

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion, findings of fact and conclusions of law of the district court (App. 483-584) are reported at 273 F. Supp. 18.

JURISDICTION

The judgment of the district court was entered on August 31, 1967 (App. 585-586). Notice of appeal was filed on October 30, 1967. Probable jurisdiction was noted on April 22, 1968 (App. 592). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States v. Sealy, Inc.*, 388 U.S. 350.

QUESTIONS PRESENTED

Since 1955 manufacturers in the paper box industry in the Southeastern United States have, upon request, furnished each other price information from which a manufacturer bidding on a specific order by a particular customer can determine the price his competitor is asking. The questions presented are:

1. Whether the defendants' actions constitute an "agreement" or "combination" to exchange price information, within the meaning of Section 1 of the Sherman Act.
2. Whether such an agreement or combination violates Section 1 because it restrains price competition.

STATUTE INVOLVED

The relevant portion of Section 1 of the Sherman Act, 26 Stat, 209, as amended, 15 U.S.C. 1, reads as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

STATEMENT

On October 14, 1963, the United States filed a complaint (App. 4) charging that nineteen¹ manufacturers of corrugated paper containers in the Southeastern United States² had, from 1955 to the date of

¹ The case against one of the 19 original defendants was dismissed after that firm went out of business.

² The Southeastern United States is defined in the complaint as the States of Virginia, North and South Carolina, Georgia, Florida, Alabama, Tennessee, and Kentucky.

filing, "engaged in a combination and conspiracy * * * [which] has consisted of a continuing agreement, understanding, and concert of action" to exchange information as to the prices each had most recently charged or quoted to specific customers in that area, for the purpose and with the effect of restricting competition among themselves in the sale of corrugated containers. After trial, the district court held that the government had not shown either a combination and conspiracy or a restraint of competition, and dismissed the complaint (App. 585).

1. THE FACTS

A. THE INDUSTRY

Defendants, who account for approximately 90 percent of the shipments of corrugated containers from plants in the Southeastern United States, have had since 1961 aggregate sales there each year of more than \$100 million (F. 8).³

While most corrugated containers are made to a customer's specifications as to dimensions, weight, color, and so forth (F. 5), they are also a standardized product in that all containers made to particular specifications are substantially identical regardless of who produces them (F. 28). Therefore, the prices purchasers will pay are determined on the basis of available price alternatives (F. 28). The industry

³ "F." refers to the district court's numbered findings of fact, which are reproduced at pp. 485-563 of the Appendix. "CX" refers to the court's exhibits. "Tr." refers to the transcript of proceedings in the district court, where not reproduced in the Appendix.

practice is to utilize delivered pricing (*e.g.*, F. 22(f); App. 594, 703-704); and to keep business or obtain new customers or additional business from existing customers, suppliers must not exceed a competitor's price (F. 25). Some purchasers do not accept the lowest initial quotation, but allow other manufacturers to meet or beat it (F. 28). The order will then be divided among manufacturers meeting the lowest bid (F. 28). It is the practice in the industry for each purchaser to buy from two or more suppliers concurrently (F. 24).

B. EXCHANGE OF PRICE INFORMATION AMONG DEFENDANTS

When a defendant wished to submit a quotation for a particular order, it would first attempt to ascertain the price alternatives available to the purchaser (App. 565-566 F. 19, 27).⁴ This information might be obtained from its own records of prior sales—if it had recently supplied the customer with similar boxes—or from the customer if the latter was willing to furnish it (F. 29). However, since a defendant's own records did not always contain such information, and since on occasion customers refused to furnish it or furnished inaccurate or misleading information (F. 30), there were times when the last price offered a specific customer could be ascertained only by asking a defendant's competitor.

To meet this need, all the defendants had a regular practice of requesting and obtaining from each other

⁴ This information was particularly important to a defendant when there had been a general price increase in the industry and it wanted to know whether competitors had increased their price quotations to a particular customer (F. 187, 312).

the most recent price offered a specific customer whenever defendants believed that they needed such information from that source (F. 69, 85, 95, 107, 117, 130, 146, 162, 183, 197, 208, 222, 238, 251, 262, 275, 289). Although it might be supplied in different forms (F. 55),⁵ this information would always reveal either the most recent price charged a specific customer in an actual sale or the price most recently quoted (F. 29). Employees of all but two defendants testified either that they gave, on request, their last quotation to a particular customer, whether a sale had been completed or not, or that the information given disclosed "the going price," what a specific customer was "then paying," or what a competitor was "then charging" (App. 622, 633-634, 639, 644-645, 669, 685, 699-700, 712, 718-720, 740, 759, 767-768, 771-772, 785, 788, 801, 842, 855-856, 882).

The court found that each defendant made an independent decision whether to request or furnish price information (F. 35), and that the extent and frequency with which such information was requested or furnished varied from defendant to defendant, from

⁵ Defendants used published manuals, containing formulas into which could be put the price being quoted for container board of a specific type ("board level") and for setting up the machinery to make containers of certain specifications (the "set-up charge") in order to derive the actual prices charged ("end prices") on various types of containers included in one order (F. 47, 52, 53). The most recent price offered to a specific customer was usually furnished to competitors in terms of the end price for the manufactured containers if only a few different types were involved in an order, and in terms of board levels if a larger number were involved (F. 55).

plant to plant, and from customer to customer (F. 32). Although there was no express agreement for the exchange of such information (F. 33), each defendant normally furnished it accurately upon request from another defendant (F. 31, 70, 86, 96, 107, 118, 131, 147, 165, 183(b), 198, 209, 223, 239, 252, 263, 276, 290), with the implied understanding that in the future it could similarly obtain like information (App. 565).⁶

C. THE DEFENDANTS' USE OF PRICE INFORMATION

A defendant regularly supplying a customer with corrugated containers would usually quote the same prices on additional orders from that customer as its previous prices, unless there had been a change in production costs, specifications, volume requirement or competitive conditions (F. 23). However, upon obtaining reliable information, from whatever source, as to the price alternatives offered to a buyer by competitors, a defendant would, in the majority of instances, quote substantially the same price as that offered by its competitors (F. 28).⁷ Even when a de-

⁶ The court specifically found that seven defendants gave price information in the belief or hope that if they did so, they would receive such information when they requested it (F. 151(f), 190, 215, 230, 270, 282, 296), and that when four defendants stopped requesting such information, they also stopped furnishing it (F. 71, 167, 186, 262).

⁷ In determining whether to seek a particular order at a particular time and at what price, each defendant considered several factors, including its own manufacturing costs and anticipated profit, the desirability of the business in view of its production situation at that time, its last price to the customer, and the prices offered by competitors (F. 22). Some-

fendant decided to quote a lower price, as it occasionally did (F. 37), knowledge of its competitors' prices enabled it to avoid going as low as it might be willing (F. 139, 151(e); App. 712).

D. THE MARKET

Sales of corrugated containers increased from slightly more than 9 billion square feet in 1955 to almost 16 billion square feet in 1963 (F. 9). Demand for such containers is determined by the volume of sales of disparate products manufactured and sold by 10,000 buyers of such containers (F. 14, 10). At any particular time, demand for containers is based upon current shipping needs of purchasers,⁸ and therefore appears to be quite inelastic.

The court found that this industry was highly competitive (F. 16), and that each defendant had price competition in the sale of containers, although not necessarily from all other defendants, at all times, in all areas or for all purchasers (F. 68, 84, 94, 106, 116, 129, 145, 155, 182, 196, 207, 221, 237, 250, 261, 274, 288). The number of defendants actually competing for the business of a particular customer was limited to those with plants located within economic shipping distance (App. 594, 703-704; CX6, p. 458). Purchasers

times a defendant would not want the business at the price offered by its competitors and would therefore quote a higher price (F. 28). In a majority of instances, it would quote the same price as its competitors (F. 28). After receiving price information from a competitor, a defendant would occasionally cut prices (F. 37).

⁸ Purchasers do not carry these containers in their inventories or enter into long-term requirements contracts with a supplier (F. 14).

were free to and did shift all or part of their business from one supplier to another (F. 17). Each defendant annually lost a substantial number of customers that it had the year before and gained many it had not had (F. 17). Each defendant also had continuing and substantial losses and gains in its sales to particular customers (F. 17).

During the period covered by the complaint (1955 to 1963), productive capacity in the Southeastern market in each year has exceeded demand for corrugated containers (F. 12), and corrugated container prices have trended down (F. 15). Prices of corrugated board, the basic material used in the manufacture of these containers (F. 6), fluctuated, but were approximately the same at the beginning and the end of the period, while labor rates, machine costs and other production costs increased (F. 15). During this same period, despite this excess capacity and the downward trend of prices, the industry has expanded in the Southeastern United States from 30 manufacturers (9 of whom are defendants) with 49 manufacturing plants, to 51 manufacturers (18 of whom are defendants) with 98 manufacturing plants (F. 9).

An ample supply of raw materials and machinery makes entry into the industry relatively easy. An initial investment of only \$50,000 to \$75,000 is sufficient for a viable enterprise (F. 11). Unit costs of manufacturing corrugated containers vary from plant to plant and from time to time, depending on the amount and type of other business in the plant (F. 13), and there is no general uniformity of prices among the de-

defendants or among the plants of an individual defendant (F. 21).

E. THE TRADE ASSOCIATION AND MEETINGS OF COMPETITORS

All but three of the defendants belonged to the Fibre Box Association, a nation-wide trade association (F. 61). The association furnished to defendants monthly the overall industry price trends computed from total industry sales, and weekly an analyzed price trend, computed from sales of more standard containers (F. 63). Each association member was also furnished his own individual price trend (F. 63). The association held monthly meetings at which these statistics and those showing raw material production and inventory were discussed, along with current business conditions, including current and expected demand as indicated by incoming orders (F. 64).

During this period, there were various meetings attended by some defendants at which firms announced price increases (F. 302, 305, 312, 313), tried to determine if competitors would similarly increase prices (F. 313, 316, 319, 320), and discussed generally such competitive problems as how price increases were holding or how they could compete with outside manufacturers (F. 303, 306, 312, 321, 323). There were no agreements made at the meetings that all would follow any particular price increase (App. 568).

2. THE DISTRICT COURT'S DECISION

The district court held that the government had not proved either the existence of an agreement among the defendants to exchange information as to the most re-

cent price charged or quoted to specific customers, or that such an agreement would have the purpose and effect of minimizing price competition.*

The court concluded that, although each defendant, on request, furnished to other defendants the most recent price charged or quoted a particular customer on the "implied understanding" that it would thereby receive such information, on request, at some later date (App. 565), there was no specific agreement or understanding to exchange such information (App. 565). In finding no agreement, the court relied on its conclusions that (1) the decisions to give or not give and to request or not request such information were the individual decisions of each defendant (App. 566); (2) defendants "usually," although not always, furnished the price information on request, and on various occasions during the period covered by this

* The district court rejected as irrelevant the defendants' claim that their conduct was permitted under the terms of a 1940 consent decree (App. 583). "It does not legalize unlawful conduct." (*Ibid.*)

The consent decree was entered in a government antitrust suit against Container Corporation, Inland Container Corporation and the predecessors of seven other defendants in this case (F. 40). It prohibits the defendants and their successors from limiting production, fixing quotas, or fixing or maintaining prices for corrugated or solid fibre containers. However, the decree specifically does not prevent the defendants from "gathering, auditing, and disseminating information as to * * * the actual price (or base price derived from actual price) which the product has brought in past transactions * * *" or deny them the right "to issue and circulate lists of current prices charged for its corrugated or solid fibre containers provided such lists are made available to the trade and competitors" as long as there is no agreement or concerted action as to prices (F. 44).

complaint, some defendants stopped requesting and furnishing such information altogether (App. 566); (3) price information was requested and furnished to competitors infrequently because defendants could usually get such information from their own records or from customers (App. 565-566); and (4) no uniformity existed as to the substance and scope of the price information given (App. 566). The court concluded that the most the government had proved was a "course of conduct by the defendants, or parallel business behavior" which under *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537, does not require an inference of a conspiracy (App. 566-567).

The court further held that even if there was an agreement to exchange price information, there was no "common scheme" to fix prices (App. 568). This conclusion was based on the findings that (1) there was substantial shifting of accounts among defendants (App. 569); (2) each defendant exercised its own independent judgment in determining the price to quote and the desirability of the business (App. 569); (3) many factors other than the price charged or quoted by a competitor entered into decisions regarding the desirability of the order and the price to quote (App. 569); and (4) this industry is highly competitive. The court concluded that the exchange of such information merely gave the recipient the ability to compete on a basis of fuller price information (App. 569).

The court further ruled that the arrangement did not have the effect of restricting price competition (App. 570). The court viewed as indistinguishable the

effect on prices of receiving price information from competitors or from a defendant's own records or customers, a practice admittedly legal (App. 571). The court also noted that there was no uniformity or harmony among defendants or plants as to the velocity or direction of individual price trends (App. 570), and that there was no evidence from customers indicating that prices charged were stabilized or harmonized by the exchange of price information (App. 570).

On this basis, the district court entered judgment for the defendants.

SUMMARY OF ARGUMENT

Defendants' practice of furnishing to one another, upon request, information as to the most recent price charged or quoted to specific customers on specific orders had the unlawful purpose and necessary effect of stabilizing prices and minimizing price competition. It was a combination, conspiracy or agreement in restraint of trade, in violation of Section 1 of the Sherman Act.

I

Explicit agreement is not a necessary element of a Sherman Act violation; "combination", "conspiracy" or "agreement" is inherent in defendants' course of conduct. The district court found that each defendant requested from his competitors the most recent price charged or quoted to a specific customer whenever it needed such information and could not obtain it from any other source, and that each defendant usually furnished such information accurately upon request,

with the "implied understanding" (App. 565) that it could obtain such information in turn at some later time. Each price communication was a joint action involving at least two defendants—the requester and the supplier of information. The court found that the defendants, after receiving price information from a competitor "felt compelled to give similar information upon request" (App. 567). This reciprocal, interdependent aspect of the practice is a unifying dimension which establishes an overall pattern of conduct constituting a "combination", "conspiracy" or "agreement" within the meaning of Section 1.

II

Concerted activity aimed at limiting price competition or tampering with the price structure is unlawful *per se* (*United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221-223, 224, n. 59), even if the limitation upon price competition may be indirect. See *United States v. General Motors Corp.*, 384 U.S. 127, 147-148. That is the situation in this case. Full disclosure among competitors of actual prices being quoted to specific customers is necessarily anticompetitive in a market, such as the corrugated-container market in the Southeastern states, characterized by relatively few sellers, identical products, competition for sales based solely on price, and inelasticity of demand. A seller in such a market without full knowledge of his competitors' price must independently decide how low he can afford to bid to return a satisfactory profit. With knowledge of the "going market" to a particular cus-

toner, however, he no longer has an incentive to go as low as he might be willing, but may seek to maximize his profit by meeting or only marginally undercutting his competitors' price. Conversely, he has little incentive to cut a competitor's price substantially if he knows that such a cut could promptly be discovered and met, because the anticipated benefit of the lower price—increased business—becomes instead an anticipated detriment—the same share of the business at a lower return. Defendants' reciprocal exchange of information in this case facilitated prompt discovery of prices quoted to specific customers. The result, as the court found, was that a defendant, after ascertaining a competitor's price, in a majority of instances quoted the same price to the customer (F. 28).

Uncontradicted testimony demonstrated that defendants were well aware that their concerted action tended to stabilize prices, and that this was the unlawful purpose of the combination. The fact that the defendants made the same use of price information whether obtained from competitors, or from their own records or from customers, does not save their collaboration from illegality. In those instances in which the defendants lacked information from records or customers, their practice of price communication is what enabled them to moderate the vigor of price competition in this industry. In the absence of defendants' practice of reciprocally exchanging price information, a buyer would have the option, in critical competitive situations, to disclose to a supplier the lowest bid received if he anticipates

that further competition will drive the price down—or not to disclose such information in those instances in which he believes that alternative would best serve his interest. The latter alternative would seem especially attractive where, as here, the most frequent result of the defendants' knowledge of a competitor's price was a matching of that price.

• The anticompetitive tendency of exchanging information as to prices charged or quoted to specific customers has twice led this Court to condemn it. *American Column & Lumber Co. v. United States*, 257 U.S. 377; *United States v. American Linseed Oil Co.*, 262 U.S. 371. And in *Sugar Institute v. United States*, 297 U.S. 553, in enjoining a scheme which compelled adherence to previously announced prices, the Court recognized the importance of preserving opportunities for pricing variations in transactions with specific customers.

The fact that defendants' arrangement did not eliminate all price competition is irrelevant, as is evidence that prices trended downward during the period covered by the complaint. The downward trend is readily explained by continuing excess capacity and pressures generated by new entry. The government did not contend, and was not obliged to show, that all price competition was suppressed; it was enough that defendants' concerted activity operated to limit and reduce it.

ARGUMENT

I. DEFENDANTS' PRACTICE OF FURNISHING PRICE INFORMATION TO ONE ANOTHER, UPON REQUEST, IS JOINT, RECIPROCAL, INTERDEPENDENT ACTION WHICH CONSTITUTES A COMBINATION, CONSPIRACY OR AGREEMENT WITHIN THE MEANING OF SECTION 1 OF THE SHERMAN ACT

1. "[I]t has long been settled that explicit agreement is not a necessary part of a Sherman Act conspiracy * * *." *United States v. General Motors Corp.*, 384 U.S. 127, 142-143. While purporting to recognize this principle (App. 564-565), the district court imposed such a requirement in concluding that although the defendants furnished price information with the "implied understanding" that such action would enable each to receive such information upon future request (App. 565), no agreement among them so to act had been established. But this Court has made it clear that an "agreement" or "combination" within the meaning of the Sherman Act may be inherent in a course of conduct. *United States v. Parke, Davis & Co.*, 362 U.S. 29; *Interstate Circuit, Inc. v. United States*, 306 U.S. 208. The course of conduct of the defendants in this case involves joint, interdependent and reciprocal action; it constitutes a "combination" or "conspiracy" whereby, on request information was exchanged from which a defendant could determine the price his competitor was charging to a specific customer. The "implied understanding" that the combination would operate in this manner constitutes an "agreement" in restraint of trade.¹⁰

¹⁰ The complaint charged that "the defendants have engaged in a combination and conspiracy * * * [which] has consisted

On the basis of undisputed facts, the district court found that, at least since 1956, each defendant requested from its competitors information as to the most recent price charged or quoted a specific customer whenever it believed such information was needed and was not available from any other source (F. 30, 69, 85, 95, 107, 117, 130, 146, 162, 183, 197, 208, 222, 238, 251, 262, 275, 289). Similarly, each defendant, upon receiving a request from a competitor for such price information, usually furnished it ac-

of a continuing agreement, understanding, and concert of action among defendants to exchange among themselves information respecting prices they have charged, contracted to charge, or quoted, specific customers, for the purpose and with the effect of restricting price competition among themselves in the sale of corrugated containers" (App. 6-7). The district court stated that the government "concedes that if it had only charged in the Complaint that the defendants had agreed to exchange price information, it would have no case, and that the Complaint would be subject to dismissal" (App. 567). From this it inferred that the government undertook the burden of showing not only an agreement to exchange price information, but also a further agreement as to the use that would be made of such information (App. 567). But the government never suggested that its case required more than a showing that *the agreement to exchange price information* had the purpose and necessary effect of restricting price competition. During the colloquy with the district judge which constituted the alleged concession, the government's trial attorney stated: "*The Government contends that this system—this system, this understanding, this common practice of doing this inevitably leads to a restriction of competition with respect to those customers for which the past market is requested*" (Tr. Jan. 11, 1967, p. 39, emphasis added). Indeed, the teaching of this Court is that inquiry into effect is unnecessary if there is a concerted undertaking by competitors to tamper with the price structure. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221, 224, n. 59.

curately (F. 31, 70, 86, 96, 107, 118, 131, 147, 168, 183, 198, 209, 223, 239, 252, 263, 276, 290). Seven defendants expressly acknowledged that their reason for giving price information was the "hope," "belief" or "expectation" that they would be furnished such information when they wanted it at some later time (F. 151(f), 190, 215, 230, 270, 282, 296). Indeed, the defendants in effect conceded that the practice of giving information was dependent upon the similar practice of other defendants, that giving was the *quid pro quo* for receiving information (Defendant's post-trial brief, p. 75):

Thus, the answer to plaintiff's question as to why a defendant *gave* and requested price information is obvious. It is because each defendant *wanted* market information from whatever source available in order to make the necessary individual marketing decisions which would permit it to compete effectively. [Emphasis added.]

In other words, the defendants gave information because such action was necessary if they were to receive the information they wanted from their competitors.

The district court similarly recognized that each defendant's furnishing of price information was dependent upon its reasonable expectation, based on the longstanding practice within the industry, that it would receive information from its competitors (App. 565):

Unquestionably, during all or a part of the period covered by the Complaint, each of the defendants furnished to other defendants, upon

request, the most recent price charged or quoted to specific customers for corrugated containers, and this was done with the implied understanding that by furnishing such information each defendant would, upon request, receive similar information. The evidence also permits the inference that each of the defendants knew that this practice was engaged in to some extent by other defendants. Since each defendant gave price information to other defendants with the expectation that the same kind of information would be furnished by the competitor, reciprocally, when requested, the plaintiff contends that a combination and conspiracy has been proved.

2. Relying on *Theatre Enterprises, Inc. v. Paramount Film Distributing Corporation*, 346 U.S. 537, the district court held, however, that despite this "implied understanding" among the defendants that they would reciprocally furnish price information to each other, the government had failed to establish the existence of combination, conspiracy or agreement because it had shown merely that the defendants had engaged in "parallel business behavior" (App. 566). This holding ignores the crucial distinction between this case and *Theatre Enterprises*. In that case, the plaintiff claimed that the refusal of motion picture producers and distributors to furnish it with "first-run" motion pictures in its suburban theatre was the result of a conspiracy among the defendants to restrict such showings to downtown theatres. In affirming a jury verdict in favor of the defendants, this Court stressed that the parallel behavior of the defendants was explainable

on the basis of the independent self-interest of each, and that the existence of an agreement was not a necessary inference from the fact that they all acted in the same way. That is, the jury had adequate basis for concluding that each film distributor independently had decided that it could maximize its own profits by limiting first-run showings to downtown theatres, without regard to whether its competing distributors followed the same practice.

Theatre Enterprises has no relevance, however, to the undisputed facts of this case, for the actions of the defendants here were in no sense "independent." In *Theatre Enterprises* the challenged conduct did not in itself involve any collaboration between two or more of the alleged co-conspirators. By contrast, the present case is *not* one of consciously parallel individual conduct among alleged co-conspirators. Each price communication necessarily was a joint action in which at least two competitors participated—the defendant requesting the information and the one furnishing it. Nor were these isolated incidents. The findings show that every one of the defendants engaged in such communications with either all or a majority of the other defendants with which it competed. Even in the unlikely event that only one communication occurred between each pair of defendants found to have communicated in this way, these findings reflect more than 100 instances of such communications between different pairs of defendants (see F. 73, 88, 98, 109, 120, 136, 149, 161, 185, 200, 211, 225, 241, 253, 265, 278, 292).

This aggregation of trade restraints resulting from the joint conduct of these freely circulating "dancing partners" (cf. *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 179) added up to a pattern of exchanges of price information upon request among the various defendants. If agreement to perform these acts would be a violation of Section 1 of the Sherman Act, then the concerted performance of the acts themselves is *a fortiori* a violation. Section 1 is designed to protect against collaborations in restraint of trade, not against mere words for their own sake.¹¹ "[C]oncerted action to restrain trade, clearly established by the course of dealings" brings Section 1 into play. *United States v. Singer Manufacturing Co.*, 374 U.S. 174, 195. "Combination" or "conspiracy" or "agreement" is inherent in the concerted performance. In reversing a holding by a district court similar to the present one on this point, this Court said, "conspiracy arises implicitly from the course of dealing of the parties." *Id.* at 194, 192-195. Accord; *United States v. General Motors Corp.*, 384 U.S. 127, 141-145; *United States v. Parke, Davis & Co.*, 362 U.S. 29, 43-45.

Moreover, as demonstrated above, each defendant's decision to furnish a price on request was interdependent upon the reciprocal decisions of the other defendants to respond in kind, also upon request. Surely the "implied understanding" that the one now furnish-

¹¹ "Thus, whether an unlawful combination or conspiracy is proved is to be judged by what the parties actually did rather than by the words they used." *United States v. Parke, Davis & Co.*, 362 U.S. 29, 44.

ing information would later be able to get the same kind of information when it made the request was a significant reason why every defendant was willing to furnish information to a competitor, for otherwise that simply enhanced the possibility that the recipient would be able to take away some or all of the particular customer's order. This reciprocal aspect of the practice establishes the interdependence of defendants' conduct—a unifying dimension of the "combination" or "conspiracy" or "agrément" among the defendants to furnish price information upon request.

3. None of the district court's stated reasons for ruling in favor of the defendants on this issue is legally relevant.

a. First, the court stated that the "conceded freedom" of each defendant to request or furnish or not to request or furnish information is the "very antithesis of agreement" (App. 566). This freedom, however, was merely the freedom to withdraw from the combination whenever any defendant concluded that the benefit of receiving information no longer outweighed the detriment of giving it. Of course, a conspiracy does not have to command undeviating obedience from all members on all occasions to be illegal. The court itself recognized that when a defendant requested information from a competitor, "by receiving such information, [it] felt compelled to give similar information upon request" (App. 567). Thus, whenever a defendant requested and received information, it was affirming its willingness to furnish such informa-

tion. The undertaking of such an obligation, in return for benefit received, is the essence of agreement.¹²

b. Second, the court's reliance upon the alleged infrequency and irregularity of price communications among the defendants (App. 565-566) overlooks the anticompetitive significance of its own findings and the supporting evidence. The frequency of requests for price information naturally varied from defendant to defendant, from time to time, and from customer to customer (F. 32). This is readily explainable by reference to the court's own finding (F. 29) that such information was usually available from defendants' own records or from the customers themselves. The necessity to ascertain price from competitors would arise only when these regular sources were unproductive. But these situations, in which competition was moderated by the exchange of price information (see point II, below), were precisely the ones that opened the possibility of price reductions and hence were the most significant. An obvious and highly important example would be when a defendant had an opportunity to bid for an order from a customer to whom it had not sold in the recent past, and the customer chose not to inform the prospective seller as to the price it would have to meet or beat in order to obtain the business.¹³

¹² It is significant that when four of the defendants determined as a matter of policy to cease furnishing price information to competitors, each also directed its personnel not to request such information either (F. 71, 167, 186, 262).

¹³ For example, the opening of a plant in a new area, with the attendant necessity of determining the "going market" to potential customers in that area, would require a relatively high

The fact that price communication may have been necessary only infrequently or irregularly¹⁴ for some defendants hardly negates the existence of a practice among all the defendants to furnish price information *whenever requested*—a practice sufficient to eliminate informational gaps in critical competitive situations. Indeed, the uncontested testimony of seven pricing officials of defendants was that the practice was well “established”, “common” and “not unusual” (App. 598, 599, 611, 655, 708, 771-772, 781). Mr. Kyle, Chairman of defendant Miller Container Corporation, perhaps best described it when he admitted that: “Well, each time we thought we had a need for it, we tried to employ the device. * * * It was a common practice for us to contact our competitors when we thought we had reason to do so” (App. 776-777).

c. Finally, lack of uniformity as to “the substance and scope of price information furnished” (App. 566) was without significance. Although the most recent price charged or quoted was furnished sometimes in terms of “board levels” and sometimes in terms of “end prices,” each defendant had available manuals with which it could compute the end prices of different frequency of requests for price information (App. 720). Any upward or downward pressure on price, such as an increase in raw material costs, also would affect the frequency of calls (App. 799).

¹⁴ Defendants sought information from competitors only when reliable information was not available from their own records or from customers (see F. 29). The willingness of customers to give such information may well be encouraged by awareness that a seller can obtain it anyway from his competitor.

types of containers once it knew the board levels and setup charges. The form in which price information was given was only a matter of convenience to the defendant requesting or furnishing it; in whatever form the information was given the recipient could ascertain the price charged by its competitor on a specific order to a specific customer (see F. 45, 46, 52, 55). It is hardly likely that competitors would communicate price information to each other and yet do it in a way that would not be comprehensible to the recipient of the information.

Nor is it significant that price information was given to a competitor sometimes in terms of the most recent price charged on a past order and sometimes in terms of the most recent price quoted a particular customer on a sale not yet complete. The court found that each defendant quoted prices determined on the same basis to the same customer over a period of time unless there was a change in market or competitive conditions (F. 23). It further found that no defendant could sell at a higher price than another defendant (F. 25), and that for that reason there was a vital need for accurate information as to price alternatives available—not once available but available now—to specific customers (F. 19(a)). The court made an individual finding with respect to each defendant that, among other reasons, it requested most recent price information from its competitors when it “considered it necessary to ascertain the accuracy of a customer’s report of another defendant’s price” (not “past price”) (F. 69, 85, 95, 107, 117, 130, 146, 162, 183, 197, 208, 222, 238, 251, 262, 275, 289).

Indeed, employees of all but two defendants testified that the price they gave reflected either their most recent quotation to a particular customer (whether the sale had been completed or not) or "the going price," i.e., what a specific customer was "then paying" or what a competitor was "then charging" (see *supra*, p. 5). Thus, when asked what he meant by "past market", one witness replied: "Poor English, I suppose. It is the price that boxes sold at. It is the price that someone is selling various cartons for." (App. 698,)

It is clear that in whatever form the price information was furnished, each defendant understood that the price he was given was the *current* price which the customer would have to pay in order to obtain containers from the defendant furnishing the information.¹⁵ Upon receiving price information as to a particular customer from a competitor, each defendant usually quoted the same price (F. 28). Such action would not make sense as a pricing decision intended to obtain business unless the recipient understood that it was receiving the current price being offered to the customer by the furnishing competitor.

In short, in its failure to hold that the practice among defendants of furnishing one another price information upon request constituted a combination,

¹⁵ The record reveals a number of specific instances in which, because the most recent price quoted a particular customer was different from a price previously charged in a completed sale, a defendant gave the most recently quoted price (App. 675, 699-700, 718-719, 740, 773-774, 791-792, 882-884).

conspiracy or agreement for Sherman Act purposes, the district court applied an erroneous legal standard to its own findings and the uncontradicted evidence. See *United States v. General Motors Corp.*, 384 U.S. 127, 141, n. 16.

II. THE RECIPROCAL EXCHANGE OF PRICE INFORMATION AMONG THE DEFENDANTS VIOLATED SECTION 1 OF THE SHERMAN ACT

The government argued in the court below that the concerted activity of the defendants violated Section 1 of the Sherman Act because it had the purpose and necessary effect of either maintaining identical price quotations to particular customers or of minimizing the amount of price reductions (App. 588-590). The court held, however, that "cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices" is not illegal so long as the decision whether or what to bid on a particular order remains "the individual decision of each defendant" (App. 569). The court thus failed to recognize that concerted activity which is aimed at limiting price competition or interfering with the setting of price by free market forces is unlawful *per se*, see *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 224, n. 59, and is no less unlawful because the limitation on price competition may be indirect, *United States v. General Motors Corp.*, 384 U.S. 127, 147-148.

1. In a hypothetical market characterized by many sellers competing on all sales (a "perfectly competitive" market), it may well be that rapid dissemination

of current price information may not restrain price competition absent a specific agreement to fix prices; indeed, in such a market full knowledge may facilitate the setting of a truly competitive price. But the corrugated container market in the Southeastern states is quite a different market, in which the necessary effect of price communication among competing sellers is anticompetitive.¹⁶ The market here is dominated by relatively few sellers—the eighteen defendants account for 90 percent of sales (F. 8), and competition for a given sale to a particular buyer usually involved substantially fewer (F. 22(f); App. 594, 665; CX 6, p. 458). Because the product sold, when made to specifications, is fungible, competition for sales is on the basis of price (F. 28). But since buyers place orders only to fill immediate, short-run needs (F. 14), demand is highly inelastic—that is, the buyer must purchase at the best price obtainable at the time and has no option to withdraw from the market if the price is too high; by the same token he will not increase the volume of his purchase in response to an attractively low price.

In such a market a seller without knowledge of the price being quoted by his competition must base his own price on an independent decision on how important the order is to him and how low he can bid and yet obtain a satisfactory profit on the business. With

¹⁶ For a general discussion of the relation of market structure to the role played by dissemination of prices, see, *e.g.*, Kaysen & Turner, *Antitrust Policy* (1959), 149–150. See, also, Report of the Attorney General's National Committee to Study the Antitrust Laws (March 31, 1955), 325–326.

knowledge of the "going market" to the customer, however, he no longer has an incentive to price as he might otherwise be willing. He may well conclude that he can maximize his profit by meeting the competitors' price, thus sharing the business (the usual decision in this market (F. 28)),¹⁷ or pricing only marginally lower if he wishes to increase his share. The tendency toward pricing uniformity is enhanced if the seller knows that if he chooses to cut a price to a customer, his competitors can ascertain this fact and promptly meet the lower price. A seller no longer anticipates the competitive advantage which would normally result from charging a lower price—a larger share of the available business. Reducing his price instead seems likely to result only in the detriment of having to accept the same share of the customer's order at a lower return. The defendants here, recognizing an obligation to furnish price information upon request as a condition of their right to request such information (App. 567), knew that any price they quoted was subject to prompt discovery by any competitor upon request.

The result of price communication in this market is apparent from the court's finding (F. 28) that a defendant, having ascertained what its competitors are charging a particular customer, would usually quote substantially the same price. In a market such as this one, maintenance of some measure of uncertainty

¹⁷ The incentive to meet rather than undercut a competitor's price was encouraged by the practice of buyers of purchasing from two or more suppliers concurrently (F. 24), and of dividing orders among sellers willing to meet an initial low bid (F. 28).

as to competitors' bids on specific orders is essential to ensure that individual pricing decisions will result in the setting of a truly competitive price. The defendants' reciprocal exchange of price information effectively eliminated this degree of uncertainty.

This Court has recognized the importance to free competition, in an industry with characteristics markedly similar to those of the corrugated container industry, of preventing too complete a disclosure among competitors of actual prices offered to specific customers. See *Sugar Institute v. United States*, 297 U.S. 553; 600:

We have noted that the fifteen refiners, represented in the Institute, refine practically all the imported raw sugar processed in this country. They supply from 70 to 80 per cent. of the sugar consumed. Their refineries are in the East, South, and West, and their agreements and concerted action have a direct effect upon the entire sugar trade. * * *

Another outstanding fact is that defendants' product is a thoroughly standardized commodity. In their competition, price, rather than brand, is generally the vital consideration. * * * The fact that, because sugar is a standardized commodity, there is a strong tendency to uniformity of price, makes it the more important that such opportunities as may exist for fair competition should not be impaired.

2. The court's own findings and the uncontradicted testimony of industry witnesses show that the defendants were well aware that their practice of exchanging price information would tend to stabilize prices; and

that this was precisely its purpose, a purpose clearly illegal under *United States v. Socony-Vacuum Oil Co., supra*. (See F. 60, 139, 151(e), 317, 321; (App. 622, 660-661, 712, 725, 731-732, 782, 819-820, 826-827, 859, 1023, 1024, 1026-1028). Testimony affirmed that the exchange of information served to prevent "destructive" prices which would "demoralize [the] market" (App. 628, 859); one witness stated that by receiving price information he could avoid going as low as he was willing to (App. 712); others that they could thus avoid quoting lower than their competitors (App. 725, 819-820); another that the exchange of information prevented a buyer from getting a "better price than he deserves" (App. 680); still another testified that without price information from competitors it was impossible for him to raise prices without losing customers (App. 782).¹⁸

¹⁸ When defendant Mead Corporation stopped giving and receiving price information, Beams, then a temporary sales manager for defendant Continental Can Company, complained in a memorandum (App. 1024, emphasis added):

It is becoming increasingly apparent that Mead Containers in this area are not following a constructive pricing pattern and it is obvious as far as the knowledge of our accounts go that they are reluctant to raise any prices wherein they have a major position. They are not following any estimating manuals with which we are acquainted and which are used in this area. We find many instances in our accounts where they have cut prices in late September and even in October. *They are not seeking any market information.* In conclusion, they will go to any length to maintain their present volume and customers and are striving by any means necessary to improve their volume position.

See, also, the memorandum by Groner of Continental Can Co. complaining of this same situation (App. 1023).

These sundry euphemisms effectively admit that the defendants requested price information from their competitors for the purpose of chilling the vigor of price competition. The defendants have not suggested any other reason for this practice, and it hardly could be contended that the defendant corporations are so ignorant of their own costs and business circumstances that they are unable to determine for themselves what prices to charge in order to return a satisfactory profit (see F. 22).

Correlatively, the willingness of the defendants to furnish price information to their competitors upon request reflects an understanding that their common purpose in requesting the information was price stabilization. As one witness testified, by giving information he prevented his competitor from cutting too low (App. 634):

We would give them the information, Mr. Bernstein. If I am selling a box for a dollar and I don't give you the information, you got to guess at my price, and I don't want you guessing 68 cents of my dollar price. If you are going to cut it I would rather you cut it a penny, to 99. Don't make me look like an idiot. That is why Dixie Container gives prices.

Of course, the fact that a cut of such magnitude by a competitor who does not receive price information is considered a realistic possibility is the strongest possible evidence that the existing market is not a

truly competitive one.¹⁹ Nor is the fact that the purpose was not necessarily to fix a specific price level, but rather to restrict the range of competition by minimizing price cuts, relevant to the conclusion that the practice violates Section 1 of the Sherman Act. For that section prohibits any concerted tampering with the price structure that impinges upon the free play of competition in setting both price levels and individual prices. See *United States v. Socony-Vacuum Oil Co.*, *supra*, 310 U.S. at 221-223; *Plymouth Dealers' Ass'n of Northern California v. United States*, 279 F.2d 128 (C.A. 9).

3. The district court concluded that the exchange of information could have no illegal effect because a defendant made the same use of such information when it was obtained from a competitor as when it came from the defendant's records or from the customer (App. 571).²⁰ It reasoned that "if purchasers had always given accurate and reliable information, there would have been no necessity for calling upon a competitor for verification, and the price structure in the corrugated container business would have been

¹⁹ The same witness testified, with apparent indignation (App. 628): "For the last two years, 95 percent of my competitors are what we call off the air, that is, no communication. In that two years, the prices of corrugated boxes have deteriorated in some instances 40 percent, simply for lack of communication."

²⁰ This, of course, ignores the teaching of this Court that the Sherman Act prohibits combinations of competitors to suppress competition even though the same economic result might have been reached in the absence of joint action. See *United States v. Parke, Davis & Co.*, 362 U.S. 29, 42.

the same as if no information had ever been exchanged with competitors" (App. 571). But this is precisely the premise of the government's case—that in the absence of information from records or customers, price communication among defendants was essential to the maintenance of a "stable" market.

In any price negotiation the legitimate interests of the seller and buyer necessarily clash. The seller seeks the highest possible price, while the buyer seeks the lowest. From this natural conflict of objectives will come the setting of a competitive price in a free market. To induce competition among sellers, the buyer will invite them to bid against one another for a given order. If the buyer anticipates vigorous competition he may conclude that it is to his advantage to advise them of the lowest bid received, contemplating that further competition will drive that price down.

In the Southeastern corrugated container market, however, sellers with knowledge of what their competitors were charging usually charged substantially the same price (F. 28). A rational buyer might well conclude that his interests would best be served by withholding from a bidder a quotation received from a competitor. By thus introducing into the bidding this element of uncertainty the buyer might expect to discourage price uniformity and stimulate price competition leading to establishment of a price based on the bidder's costs. Through their reciprocal exchange of price information in times of "necessity," defendants had the means to frustrate this legitimate pur-

pose by prompt communication of market alternatives to ensure a stabilization of price.

4. The conclusion that communication among competitors as to actual prices charged or bid to specific customers is a forbidden means of reducing incentives for price reductions is hardly novel doctrine. This Court recognized the unlawful tendency toward restraint on price competition of such practices in two leading cases more than forty-five years ago. *United States v. American Linseed Oil Co.*, 262 U.S. 371; *American Column & Lumber Co. v. United States*, 257 U.S. 377.

In *American Column & Lumber*, the defendants, through their trade association, exchanged weekly reports based on their daily reports of the exact terms of each sale actually made, including the names of the buyer and seller.²¹ The accuracy of these reports was ensured by an association audit. The association also sent out analyses of reports as to future market conditions, along with suggestions as to future prices and production. On these facts the Court found, despite the absence of an agreement as to the exact prices to be charged, that there was a concerted, systematic effort to increase prices which was illegal under Section 1 of the Sherman Act.

Although only information as to past transactions was reported in *American Column*, the Court found

²¹ The defendants there also exchanged compilations of monthly production reports, monthly stock reports, and price lists. This Court has upheld the exchange of such information (*Maple Flooring Mfgs. Assn. v. United States*, 268 U.S. 563), and it is not challenged here.

that sufficient information was given so that an expert analyst could readily evolve an attractive basis of "harmonious," if unexpressed, cooperation for future prices (257 U.S. at 411). In the present case, no expert analyst is necessary; everyone in the industry can evolve a basis for "harmony" from the disclosure of current prices to a particular customer at a particular time. The Court recognized, in *American Column*, that reports as to specific sales to particular customers make discovery of price reductions inevitable and immediate (257 U.S. at 411). In a market characterized by relatively few sellers and inelastic demand, price reductions are thus discouraged not only by "business honor" (*ibid.*)²² but also by each competitor's incentive to obtain a share of the existing business at the highest possible price.

American Linseed involved the legality of an agreement among members of a trade association to report the names of the buyer and seller in each transaction and the exact price and terms of offers accepted or rejected. Like the defendants here, each member of the association could receive information, on request, as to the terms of the last sale or offer to a buyer and

²² This concept of "business honor" apparently was not lacking among the defendants here. Witnesses testified that it was not their policy to cut a price after requesting it from a competitor (CX 4, p. 191; CX 6, p. 177). ~~There was also evidence that a defendant which cut a price furnished by a competitor (App. 608, 635). There was also evidence that a defendant which cut a price furnished by a competitor could expect recriminations from the furnisher (App. 615-616, 721-722). On one occasion, representatives of defendant firms based in Baltimore and Richmond arranged a special meeting in Washington, D.C., to "explain" why one had undercut the other's price after requesting price information (App. 662-664).~~

could also verify a customer's claim of a price reduction by a competitor. Defendants there, like defendants here, claimed that the purpose of the exchange of information was to enable them to compete intelligently, but the Court recognized that the necessary effect of the arrangement was suppression of competition.

The fact that the agreement in *American Linseed* obligated the members of the association to attend monthly meetings to discuss pricing and required them to adhere to list prices filed with the association does not vitiate its force as a precedent here. The lack of these specific requirements here does not disprove that the defendants were utilizing their practice of concerted reciprocal exchange of information in order to moderate price competition.²³ As we have pointed out above, intelligent competitors in this type of market will, and defendants here did, recognize that their interest in maximizing profits will usually be best served by adhering closely to prices being charged by their competitors.

²³ Although attendance was voluntary, defendants' trade association held monthly meetings at which statistics as to price trends and production and inventory of raw materials were reviewed, and current business conditions (including current and anticipated demand as indicated by incoming orders) were discussed (F. 64). These activities were not challenged by the government. In addition, several defendants had, at various times, published price lists which were available to other manufacturers and customers (see F. 46-49). However, as is usually the case in an industry in which the product is sold to specification, price lists did not afford a reliable basis for predicting actual prices to particular customers (F. 59, 60). Defendants' reciprocal exchange of information as to specific prices to named customers affords a far more effective and reliable means of rapid price communication.

Subsequent to *American Column* and *American Linseed*, this Court decided *Maple Flooring Mfgs. Assn. v. United States*, 268 U.S. 563, which the district court erroneously regarded as dispositive of the present case. In *Maple Flooring*, the defendants reported to a trade association individual statistics from which the association computed and distributed industry statistics as to the average cost to members of all types and grades of flooring, freight rates to points in the United States from a point approximately equidistant from all defendants' mills, and a summary of the quantity and kind of flooring sold and still on hand. Prices received for past sales were reported *without identifying the parties to specific transactions*. While recognizing that such information could be used as a basis for price-fixing, the court concluded that its distribution did not necessarily have that effect and therefore was not illegal without actual evidence of such improper use.

The district court, in treating *Maple Flooring* as controlling here, not only overlooked the significant evidence of anticompetitive purpose in this case, discussed *supra*, but also failed to recognize the difference in the *type* of information exchanged.²⁴ That

²⁴ The district court's comment that the exchange of information by the defendants here was less frequent and less detailed than that in *Maple Flooring* (App. 580) apparently overlooks the fact, reflected by the findings (F. 62, 63, 64), that the defendants' trade association did compile and disseminate detailed statistics of the type sanctioned in the earlier case. The reciprocal price exchanges which the government challenged went significantly beyond such legitimate trade association practices.

difference was the basis upon which this Court in *Maple Flooring* distinguished its earlier cases (268 U.S. at 584). The information disseminated by the association in *Maple Flooring* related only to past sales and did not identify buyer or seller, and thus did not afford a basis for determining current prices to any particular customer. In the present case, however, the price information furnished was in such form that current price was readily determinable (see *supra* pp. 24-26), and the court below should have recognized the necessary anticompetitive effect of the defendants' practice in the market context.

The district court also believed (App. 580-583) that the purpose of the defendants' exchange here of accurate information as to price alternatives available to a specific customer was sanctioned by *Cement Manufacturers Protective Association v. United States*, 268 U.S. 588, the only case in which this Court has upheld an agreement among competitors to exchange information as to specific sales. That decision rested, however, upon special facts characteristic of the cement industry at that time but not present in this case involving the container industry.

Because of the peculiar way cement was sold to contractors—suppliers gave contractors irrevocable offers to furnish all cement required for a specific job at a specific price which a contractor was not required to accept or reject until he won the bid for that job—during periods of rising prices contractors were tempted to, and often did, accept offers of several suppliers, thus trying to force delivery of more cement

than was needed for a specific job. Cement manufacturers who did not know about specific offers to specific customers during these periods could thus be fraudulently induced to deliver more cement, at below market prices, than was actually required under their contracts. The Court held that in those circumstances, the collection and dissemination of such information was not illegal because it was the only practical means to provide cement manufacturers with information necessary to protect their *legal* rights (268 U.S. at 603-604).²⁵

In the present case, the court found that customers sometimes gave the defendants inaccurate, incomplete, or misleading information as to prices that had been offered to them by competitors (F. 30). But unlike the defendants in *Cement Manufacturers*, the defendants here have no legal right to such information from customers unwilling to give it, nor do they have a legal right to base all pricing decisions on full knowledge of competitors' prices. Contrary to the view of the court below, this case on its facts is governed by the earlier price information cases and is distinguishable from the later ones.

Any possible doubt as to this conclusion is dispelled by the fact that, subsequent to *Maple Flooring* and *Cement Manufacturers*, this Court reaffirmed its con-

²⁵ *Cement Manufacturers* is unique in its allowance of the alleged need for protection against "unethical" competitors or customers as a defense to an otherwise *per se* violation of the Sherman Act. More recent cases have flatly rejected such a defense. See *Fashion Originators' Guild v. Federal Trade Commission*, 312 U.S. 457; *United States v. Socony-Vacuum Oil Co.*, *supra*; *Sugar Institute v. United States*, 297 U.S. 553.

cern that concerted action to disseminate among competitors actual prices charged to specific customers in a market such as the present one necessarily tends to restrain price competition. *Sugar Institute v. United States*, 297 U.S. 553. Defendants there had agreed that each would adhere to its publicly-announced prices and terms of sale in all transactions until it gave advance public announcement of any intended changes. Although it was argued that this arrangement facilitated "fair" competition by preventing "unethical" secret discounts, the Court ruled that it was an unlawful "concerted undertaking which cut off opportunities for variation in the course of competition however fair and appropriate they might be" (297 U.S. at 601). To preserve such opportunities the Court did not prohibit open announcement of price changes to the trade (in effect nothing more than price lists), but enjoined the additional restrictions designed to secure adherence to announced prices.

The defendants here recognized as clearly as did the sugar refiners that published price lists or published manuals for computing prices, because they do not reflect the often quite different prices actually charged to specific customers, are not an effective means of eliminating the opportunity for price competition based on discounts from lists (App. 811-812, 893-894, 903-904, 1041-1043; CX6, pp. 608-609). By furnishing to one another upon request accurate information as to prices charged or quoted to specific customers on particular orders, the defendants, like those in *Sugar Institute*, were enabled to employ the

self-interest of each competitor to minimize price competition among them. That they could achieve this plainly unlawful purpose and effect without cumbersome machinery to ensure adherence to announced prices makes their concerted activity no less unlawful.

5. Finally, the district court's emphasis on the fact that the arrangement did not eliminate all price competition in the industry is irrelevant. See *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30, 44. Nor does the fact that prices trended downward during the period covered by the complaint (F. 15, App. 570) have any bearing on the question whether prices were maintained at a competitive level or would have been lower in the absence of defendants' reciprocal practice. Cf. *Standard Oil Co. ("Standard Stations") v. United States*, 337 U.S. 293, 309. Given an industry with constant excess capacity (F. 12) and substantial increase in plants and entry of new competitors (F. 9), prices would be expected to move downward in response to these pressures.²⁶ In any event, the government did not contend that the arrangement had the purpose or effect of suppressing all price competition in the industry, but only that it operated to limit and reduce the vigor of such competition—an effect that is no less unlawful under Section 1 of the Sherman Act. See *United States v.*

²⁶ Indeed this impressive amount of expansion and new entry is highly suggestive that prices were maintained above a truly competitive level. Businessmen may not ordinarily be expected to invest heavily in an industry characterized by unused capacity and inelastic demand unless the anticipated return is unusually attractive.

General Motors Corp., 384 U.S. 127, 147-148; *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 221-223, 224, n. 59.

CONCLUSION

For the reasons stated, the judgment of the district court should be reversed and the case remanded for the entry of an appropriate judgment.

Respectfully submitted.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA;

Appellant,

—V.—

CONTAINER CORPORATION OF AMERICA, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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ARGUMENT

The requesting by a supplier from another sup-
plier of the latter's most recent price for a specific
product and the giving of such information upon
request without any agreement or concert of action
with respect to the price to be charged or quoted
that customer by either of them, where in all in-
stances the determination as to the price to be
charged or quoted was each supplier's individual

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1968

No. 27

UNITED STATES OF AMERICA,

Appellant,

v.

CONTAINER CORPORATION OF AMERICA, et al.,

Appellees.

BRIEF FOR APPELLEES

The several appellees ("defendants") join in this single brief because, although the facts vary considerably with respect to each of them, appellant's ("plaintiff's") case rests upon those facts which are common to all defendants, and analysis of the facts and the applicable law demonstrates that the district court properly dismissed the complaint.

Question Presented

The frame of this appeal is set askew by the plaintiff's statement of the questions presented, which is premised on a factual assumption unsupported by the evidence and squarely contradicted by the stipulations of plaintiff at

trial and the agreed upon findings of the district court.* Thus, we will show that plaintiff's statement of the questions presented is not accurately expressed in the terms and circumstances of the case. There is only this question:

Whether the district court erred in finding that the requesting and furnishing of price information by these defendants in the manner, for the purpose, and with the effect stipulated or agreed to by the parties, and found by the district court, does not constitute an agreement or combination among the defendants in restraint of trade or commerce within the meaning of, or in violation of, Section 1 of the Sherman Act.

Statement

1. The Proceedings Below

Substantially all of the facts were stipulated before trial under procedures carefully supervised by the district court pursuant to modern pretrial rules, and after the plaintiff had had ample opportunity to verify each of the facts.

The plaintiff began work on the case with an enormous reservoir of evidence since a grand jury investigation (from which no indictment resulted) had provided the testimony of large numbers of witnesses and hundreds of thousands of documents. The plaintiff then took pretrial

* The district court's findings of fact and conclusions of law are reported at 273 F. Supp. 18. As used herein, "F." refers to the district court's numbered findings of fact. "CX" refers to exhibits admitted by agreement as court's exhibits. "Tr." refers to the transcript of proceedings in the district court. "PX" refers to plaintiff's exhibits. "DX" refers to defendants' exhibits, "D.P.F." refers to Defendants' Proposed Findings of Fact and Restatement of Certain Findings of Fact Proposed by the Plaintiff and "Br." refers to plaintiff's brief in this Court. "App." refers to pages in the appendix on this appeal.

depositions of 34 employees of the various defendants and was furnished with a great bulk of additional material, either at the plaintiff's request or tendered by the defendants.

As a result of many months of labor of counsel, and many pretrial conferences, it became clear that there were no substantial factual disputes and the depositions and much other evidence were compressed into stipulations of fact. Thereafter, painstaking preparation and cooperation made it possible to limit the actual time for presentation of evidence to a day and a half. This was followed by very detailed briefing and two days of oral argument before the district court.

After trial, counsel cooperated in preparing, exchanging and commenting upon proposed findings of fact. The result was that the findings of fact made by the district court had been agreed to by plaintiff almost without exception. The agreed findings, and the few contested findings based on the district court's own review of the stipulations, depositions and hundreds of documents, are unassailable in this Court because they are all squarely supported by the evidence.

2. The Issue

It will help to focus the issue in this Court if we first point out what this case is *not* about:

There is no charge—and no proof—that any defendants, at any time, fixed prices or attempted to fix prices either generally or to any specific customer. The facts were such that, after full investigation, the plaintiff stipulated that every price decision of each of the 18 defendants during the entire eight years of the

alleged conspiracy had been determined by that defendant individually in the exercise of its own business judgment, taking into account all of the factors which normally influence price decisions in the absence of any agreement or combination affecting price (F. 22 [App. 494-5], F. 28 [App. 496-7], D.P.F. 28 [App. 69-70], D.P.F. 34 [App. 71-2]).

There is no charge—and no proof—that prices have been stable or uniform or parallel as among any defendants. The only evidence offered as to prices—that offered by defendants—proved, beyond quibble, the absence of any general uniformity, harmony, stability or parallelism in prices of the various defendants, and that price trends varied widely among the several defendants both as to direction and as to degree (F. 21 [App. 494], DX-6 pp. 36-46 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 36-46]). (We know of no Sherman Act case alleging a combination or conspiracy to restrict price competition where there was even remotely similar evidence.)

There is no charge—and no proof—that prices were artificially high or that profits were such as to permit an inference of restricted competition. In fact, during the eight year period covered by the complaint, prices of commodities and services generally were increasing, and the defendants' costs were increasing, yet defendants' prices declined (F. 15 [App. 489-90], DX-6 p. 1 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III p. 1]).

There is no charge—and no proof—that the defendants allocated customers, or agreed not to take each other's customers by cutting prices. The plaintiff stipulated, again compelled by the facts, that each of the more than 10,000 purchasers of corrugated containers in the Southeastern United States had nu-

merous sources of supply, both actual and potential, and that although customers generally did not shift suppliers except when offered a better price by a new supplier, customers did in fact frequently shift all or part of their business from one supplier to another (F. 9 [App. 487-8], F. 10 [App. 488], F. 17 [App. 490], DX-6 pp. 21-4 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 21-4]). For example, we find the stipulated evidence that Container Corporation had 3,132 customers in 1960 (F. 18(a) [App. 491]); 1,209 of these customers had bought nothing from Container in 1959 and, by stipulation, can be presumed to have been taken by Container from its competitors as a result of price cutting (F. 17 [App. 490]). Moreover, 1,210 of Container's 1960 customers bought nothing from that company in 1961, again presumably because of price cutting by its competitors, as customers generally did not shift suppliers except on the basis of lower prices (F. 17 [App. 490], F. 18(a) [App. 491]).

This case does not involve a systematic practice of price communication or any "exchange" of information. Only in infrequent situations was price information requested from a competitor and then principally to verify a customer's report of a competitor's lower price (F. 29 [App. 497], F. 30 [App. 497], *e.g.*, F. 69 [App. 509]). Thus, for example, International Paper had only two to twelve calls a month, including both the requests it made for information and the answers it gave to the requests of others, while at the same time its salesmen were averaging 1,800 to 2,000 calls per month on customers and prospective customers (F. 158 [App. 526-7], F. 159 [App. 527]).

It is even conceded that no employee of any defendant ever discussed with any employee of any other

defendant the desirability of furnishing price information, the fact that price information had been or was being communicated, the frequency of such communication, the consequences of requesting or failing to request such information, the method of communicating, or the action to be taken or not to be taken with respect to any such information (F. 34 [App. 498]).

Nor is there any evidence that any customer was injured or paid a higher price because of the conduct of the defendants, or felt in any way prejudiced by the conduct of any defendant. Over a year before the trial, the plaintiff was given the names of each of the more than 10,000 customers of the defendants and, finally elected to call none as a witness (F. 20 [App. 493-4]).

With this background, the plaintiff's purely theoretical argument on this appeal emerges. It is that obtaining information from a competitor as to the price it had charged in its most recent actual sale is *per se* illegal under the Sherman Act, irrespective of why this information is sought or how it is used or what effect it has on prices or on competition generally. Here, when the information was obtained from a competitor it was used in exactly the same way as when the same information was obtained, as it usually was, from the customer himself, *i.e.*, as only one of many factors considered in making an admittedly independent pricing decision (F. 22 [App. 494-5], F. 28 [App. 496-7]). There simply is no evidence that defendants had any different purpose in seeking price information from a competitor than when they sought it from a customer. Obtaining of price information from a competitor had no different effect upon competition than obtaining it from the customer.

The only pertinent fact relied on by the plaintiff and proved below was the occasional receipt by each defendant of past price information from another defendant. The plaintiff's concept is that it is illegal to obtain knowledge of a factor which an informed trader would take into account in determining what price he, as a matter of completely individual decision, should decide to offer a customer in his effort to compete vigorously for the business of that customer, fully free to cut prices or do anything else he wishes to get the business of that customer. From this single fact common to all defendants, the plaintiff would have this Court infer the agreement, purpose and effect necessary to constitute a Sherman Act violation, ignoring in the process the evidence, stipulations and agreed findings of fact which preclude the making of such inferences. It thus seeks to substitute a new and hypothetical framework for the stipulated factual case upon which issue was joined and upon which the district court correctly decided that there was no agreement to restrain trade and no restraint of trade.

3. The Facts

As the plaintiff's brief ignores its stipulations and relies not upon the evidence but upon asserted inferences from the evidence and hypotheses contrary to the evidence, it is particularly important that the facts be stated properly. Therefore, before analyzing the plaintiff's argument, we correctly set forth the factual premises.

What conduct is involved?

The conduct upon which the complaint is based is simply this: For longer than anyone can remember, members of

this industry have, on occasion, requested from a competitor information as to the latter's most recent price to a specific customer for specific corrugated containers, and usually—not always—the information was furnished (e.g., F. 238 [App. 544], F. 239 [App. 544]). The need for such price communication arose from the fact that there are no published price lists for corrugated containers which are custom made to fit each of the multitude of products shipped in them, e.g., a container for each particular chair must fit exactly or it will scuff the surface (F. 5 [App. 486]). The plaintiff agreed to a finding that in order to compete effectively in this industry, each defendant had a vital need for information as to the price alternatives available to its customers or prospective customers (F. 19(a) [App. 492-3]; D.P.F. 25(a) [App. 66-7]). Moreover, from the stipulated facts as to each defendant the district court concluded that:

"The defendants were at all times free to request from or furnish to competitors, or not request from or furnish to competitors, information as to prices for corrugated containers, and whether or not to request or furnish such information was the individual decision of each defendant." (273 F. Supp. at 59 [App. 566]; see F. 35 [App. 498]).

How frequently, and on what occasions, did a defendant request price information?

The district court found that price information was requested from a competitor only infrequently, and only if it was not available from any of the more usual sources, i.e., either a defendant's own records of its past sales to the customer or the customer itself, since secret or closed bidding was not the practice in the industry, and purchasing agents,

after receiving a price from one defendant, often solicited other defendants to meet or beat that price, which they often did (F. 19 [App. 492-3], F. 29 [App. 497]). When information was requested from a competitor, it usually was for the purpose of verifying information received from a purchasing agent, for purchasing agents, on occasion, furnished suppliers with incomplete, inaccurate or misleading information as to the prices of competing suppliers (273 F. Supp. at 59 [App. 565-6]; F. 28 [App. 496-7], F. 30 [App. 497]; *e.g.*, F. 69 [App. 509], F. 157 [App. 526]). Thus, when a defendant verified the report from a customer of a competitor's price, it was in no better position than it was before the inquiry, except in those instances when the customer had lied to that defendant, and we do not understand it to be any part of the purpose or policy of the Sherman Act to protect untruthfulness.

Except to verify the veracity of a purchasing agent, a defendant did not request price information from a competitor with respect to its own customers, for if a defendant had recently sold corrugated containers to a customer, that defendant usually would, in the absence of changed conditions, charge on the basis of the price revealed in its own records of prior transactions. (F. 23 [App. 495], F. 29 [App. 497]).

The plaintiff's contention that it was the purpose of the defendants to mitigate price competition by "rapid dissemination of current price information," (Br. pp. 27-8) is rebutted by its own stipulations. The plaintiff agreed that no defendant ever volunteered its past price to any other defendant, but merely furnished information on the infrequent occasions when it was requested; and that a defendant requesting past price information was not asked and did not volunteer the price it had last charged or quoted, much less the price it currently intended to charge for its own product (F. 31 [App. 498], F. 33 [App. 498]).

The parties also stipulated that, when past price information was not available from the defendant's own records or from the purchaser and the defendant found that price information was necessary in order to compete effectively, a defendant "usually" requested that information from a competitor and the competitor either "usually" or "sometimes" furnished it (*e.g.*, F. 117 [App. 518], F. 118 [App. 518], F. 238 [App. 544], F. 239 [App. 544]). The plaintiff's argument, on the other hand, is predicated on the assertion that the information was always requested and always furnished (Br. p. 5). This erroneous assertion forms the premise for several of the plaintiff's arguments, including, for example, the argument that an agreement to furnish information on request may be inferred from the fact that the information was requested "whenever" it was not otherwise available and was furnished "whenever" requested.

The same observation can be made with respect to the asserted existence of "a regular practice of requesting and obtaining" (Br. p. 4) price information from competitors when the requesting and furnishing in fact occurred infrequently, irregularly, and in limited circumstances. The uniform pattern of conduct which the plaintiff postulates does not, in fact, exist. A competitor was always uncertain whether another supplier had reduced its price unless that competitor was so advised by the customer himself—and even then the competitor could not confidently rely on the customer's word. Thus, the uncertainty which the plaintiff demands was always present, for each defendant, as stipulated, remained free at all times to determine individually the price it would seek to charge (F. 28 [App. 496-7]).

What price information did the defendants in fact communicate?

Perhaps the most pervasive non-fact in the plaintiff's brief is the assertion that the information requested and obtained was "the price his competitor is asking." (Br. p. 2) The plaintiff, with full access to the facts, stipulated the contrary: although *some* defendants *sometimes* furnished information as to their last quotation, the plaintiff stipulated that at least eight of the defendants furnished price information *only* with respect to completed sales (F. 99 [App. 515], F. 135 [App. 521], F. 151(g) [App. 523-5], F. 212 [App. 539], F. 226 [App. 542], F. 242 [App. 544], F. 255 [App. 546], F. 293 [App. 552]). This stipulation, without quibble or reservation, precludes the speculation, offered by the plaintiff as a fact, that these defendants were communicating "the *current* price which the customer would have to pay in order to obtain containers from the defendant furnishing the information." (Br. p. 26) That a defendant sometimes requested information from a competitor when it "considered it necessary to ascertain the accuracy of a customer's report of another defendant's price" (e.g., F. 289 [App. 552]) cannot erase from the record such a finding, for example, as the one that the "price information requested and/or furnished by Weyerhaeuser related to prices charged customers in actual sales," (F. 293 [App. 552]) or any of the similar findings concerning other defendants.

These are not instances where the district court made findings of fact on disputed evidence. The findings were stipulated by the plaintiff to be correct after the plaintiff was fully aware of all of the testimony and documents from which it now culls isolated words and phrases.

Why was price information requested or furnished by the defendants?

The reasons why price information was requested or furnished by the defendants on these infrequent occasions are also clearly established by stipulated facts and set forth in findings agreed to by the plaintiff. The contention that the requesting or furnishing of price information was grounded in a purpose to "stabilize prices" (Br. p. 30) is in irreconcilable conflict with these facts and findings.

It was stipulated that each defendant "requested price information from other defendants in order to aid it in making informed pricing and marketing decisions" (e.g., F. 76 [App. 511]), and it was agreed that in order for a defendant "to compete effectively for the business of a purchaser, there is a vital need for information as to the price alternatives available to that purchaser" (F. 19(a) [App. 492-3]). To seek information in order to compete effectively is the very antithesis of a purpose to stabilize prices. The reasons underlying that need were likewise undisputed so there can be no disagreement as to the plain meaning of that concession:

1. "Every purchaser of corrugated containers had numerous alternate sources of supply, both actual and potential," and purchasers were "free to shift all or a part of their business from one supplier to another, and they frequently did so . . . on the basis of price" (F. 17 [App. 490], F. 28 [App. 496-7]).

2. Purchasers "had knowledge of prices which had been and were being offered by competing suppliers of corrugated containers" (F. 26 [App. 496]).

3. "Prices which purchasers of corrugated containers would pay were determined on the basis of

price alternatives available to them from existing and prospective suppliers," and "with minor exceptions . . . no manufacturer of such containers was able to obtain a higher price for such containers than the price at which another manufacturer had sold or offered to sell like containers to such purchaser" (F. 25 [App. 496], F. 28 [App. 497]).

4. "It was necessary for each supplier to meet or be below competition in order to retain its customers, and to meet or be below the prices and other terms offered by competitors in order to obtain new customers or additional business from existing customers" (F. 25 [App. 496]).

5. A defendant, as a supplier or prospective supplier of corrugated containers to a particular purchaser, had available to it only two sources of information as to price alternatives available to that purchaser, the customer or competing suppliers (F. 29 [App. 497]).

6. "On occasions, buyers furnish suppliers with incomplete, inaccurate, or misleading information as to prices offered by competing suppliers" (F. 30 [App. 497]).

The reasons for furnishing price information are, of course, entirely consistent with that same competitive purpose, as the "requesting" and the "furnishing" are like the head and the tail of the same coin. Some defendants gave price information upon request because it gave "an insight as to who was actively competing for a particular piece of business" (F. 124 [App. 519], F. 270 [App. 549]); other defendants furnished price information because they "believed" it was "unlikely" that they could obtain such

information when they needed it to compete unless they usually furnished it when requested (F. 151 [App. 523-5], F. 203 [App. 538], F. 215 [App. 540], F. 230 [App. 542-3], F. 296 [App. 553]), or they did so "hoping that such information would be given to it on those occasions when it might want such information" (F. 282 [App. 551]). These reasons all relate to the same underlying purpose—"to compete effectively."

How was price information used?

The facts concerning the use which was made of price information—an individual use—are also set forth in uncontested findings:

1. "In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, each defendant exercises its own business judgment. Many factors influence the decision, including, among others, the following:

• • •

"(p) prices believed to have been most recently charged or quoted by competitors, when such defendant believes it has sufficient basis for such belief." (F. 22 [App. 494-5])

2. "In arriving at the price to be quoted or charged a particular purchaser for particular corrugated containers, each defendant took into account the price currently or most recently charged by it to that purchaser for the same or similar corrugated containers, the price alternatives available to the purchaser, its estimated manufacturing costs, desirability of such business, and the anticipated profit involved. * * *" (F. 50 [App. 504])

3. "In all instances, the determination as to the price to be charged or quoted by . . . [each defendant] was its individual decision. In deciding whether to seek a particular order from a particular customer, or whether to offer to sell a particular container, and in determining the price to be charged or quoted, . . . [each defendant] exercised its own business judgment." (F. 79 [App. 512], F. 92 [App. 514], F. 103 [App. 516], F. 112 [App. 517-8], F. 125 [App. 519-20], F. 142 [App. 522], F. 153 [App. 525], F. 174 [App. 530], F. 189(d) [App. 535-6], F. 205 [App. 538], F. 217 [App. 540-1], F. 233 [App. 543], F. 246 [App. 545], F. 258 [App. 546-7], F. 272 [App. 549], F. 298 [App. 553])

4. ". . . [Each defendant] requested price information from other defendants in order to aid it in making informed pricing and marketing decisions. Price information received by . . . [each defendant] from other defendants was taken into account and utilized by such company in individually determining the prices to be charged or quoted by it in the same manner, to the same extent, and with the same effect as price information which it usually and ordinarily received from purchasers, provided the price information received from purchasers was considered reliable." (F. 76 [App. 511], F. 91 [App. 514], F. 102 [App. 515-6], F. 110 [App. 517], F. 123 [App. 519], F. 141 [App. 522], F. 151 [App. 523-5], F. 169 [App. 529], F. 189 (b) [App. 535-6], F. 202 [App. 538], F. 214 [App. 540], F. 229 [App. 542], F. 244 [App. 545], F. 256 [App. 546], F. 268 [App. 548], F. 281 [App. 550-1], F. 295 [App. 553])

What was the effect of the communication of price information upon price competition?

Here too the record is replete with undisputed facts which preclude any inference of an adverse effect upon price competition.

This industry was highly competitive and characterized by unrestricted price competition (F. 16 [App. 490], F. 19 [App. 492-3], 273 F. Supp. p. 61 [App. 570-1]). Each defendant sought additional business by cutting prices other defendants had charged or quoted (F. 19(g) [App. 493]). Each defendant repeatedly lost customers and obtained new ones and continuously had losses and gains in its sales to particular customers, all by reason of vigorous price competition (F. 17 [App. 490], DX-6 pp. 21-4 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 21-4]):

Purchasers usually informed suppliers and prospective suppliers as to prices most recently charged or quoted by competing suppliers and identified the particular supplier or suppliers charging or quoting such prices (F. 19(b) [App. 493]). Absent price information, a supplier or prospective supplier often quoted prices higher than those charged or quoted by other suppliers (F. 19(e) [App. 493]). Upon obtaining such price information suppliers and prospective suppliers often reduced their prices (F. 19(d) [App. 493]). At all times each defendant was free to cut the price of a competitor (F. 37 [App. 499]). In all instances the determination as to the price to be charged or quoted was the individual decision of each defendant (e.g., F. 79 [App. 512]).

4. The Plaintiff's Factual Arguments

We can now revert to the plaintiff's predicate to its statement of the questions presented, which is that from the past price information obtained from a competitor, a defendant "can determine the price his competitor is ask-

ing." (Br. p. 2) As set forth above, the only common denominator among the defendants is that the information given was the price at which the last completed sale had been made. Although some of the defendants occasionally disclosed instead the last offer made to a customer, rather than the last completed sale, this case would in any event have to be dismissed against at least half of the defendants if the plaintiff were to rely upon that occasional conduct of the others.

Moreover, the district court found, on undisputed and indisputable evidence, that neither the last price nor the last offer provided the basis for a reliable prediction of what a company would charge the next time (F. 22 [App. 494-5], F. 23 [App. 495-6]). The plaintiff's argument holds up only if no competitor ever changed its price, and of course, the facts are to the contrary. While the plaintiff iterates and reiterates one sentence from the stipulations to the effect that a supplier "usually" charged its customer the same price as on its last previous sale, it is really quoting out of context,* eliding the fact that the last previous price was not used on future orders whenever any one of a list of factors which influence pricing decisions had changed, and this list includes every conceivable reason for changing a price.

That a supplier usually charged his customer the same price as on a prior order was not the result of giving or

* The district court's finding reads: "A defendant regularly supplying a customer with corrugated containers, when pricing an order from that customer for additional corrugated containers of the same or different specifications, would usually price such additional containers on the same basis used by it in pricing that customer's last previous order. The foregoing was subject to change when (1) there had been a change in any of the competitive or other market factors or conditions; (2) the specifications and volume requirements were not substantially the same; or (3) there had been a change in raw material costs or other significant costs." (F. 23 [App. 495-6])

receiving price information as the plaintiff repeatedly suggests. Assuming first that there had been no change in any of the circumstances referred to above, the same price was "usually" charged only in the absence of the report of a competitor's lower price. In fact, competitive conditions were constantly changing, and price trends were never level, but always up and down (*see* DX-6, pp. 25-46 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 25-46]), raw material and other significant costs were not constant for any period of time (DX-5, pp. 1-6 [Tr. Jan. 27, 1966 p. 227] [App. 1014-9]), and there was continuous price cutting (DX-6, pp. 21-4 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 21-4]). Moreover, even if one supplier could assume that in certain circumstances its competitor would initially seek to charge a customer the same price as charged on the previous sale, it made no difference for both that supplier and each of its competitors were completely free to meet or beat that price as it saw fit in its individual judgment.

Most important, however, is that, even if it be assumed, as a purely hypothetical matter, contrary to the facts, that the receipt of the price information involved here enabled one to assume with certainty what his competitor would initially seek to charge, the legal issue would remain the same: whether the mere receipt of such price information without agreement to charge that price or any agreement whatever as to the use to be made of the information, with each price individually determined, and without any proof of any restrictive effect, is *per se* unlawful.

(a) The structure of the corrugated container market in the Southeast United States

Bowing to accepted economic theory, the plaintiff acknowledges that in a "perfectly competitive" market, full knowledge of current price information may facilitate the setting of a "truly competitive price." (Br. pp. 27-8) To escape from the obvious conclusion which appli-

cation of that principle to the facts in this case compels, the plaintiff attempts to picture the market as "dominated by relatively few sellers" and therefore one in which knowledge should be considered illegal without proof* (Br. p. 28).

There were not "relatively few," but fifty-one sellers in the market (F. 9 [App. 487]). It took eighteen to account for 90% of sales and, although not every one competed for the business of every customer, it was stipulated that each purchaser had "numerous" alternative sources of supply, both actual and potential (F. 8 [App. 487], F. 17 [App. 490], *e.g.*, F. 18 [App. 491-2]).

The Department of Justice recently issued merger guidelines, and it defined a "highly concentrated market" as one where the four largest firms have 75% or more of the market (Dept. of Justice Release dated May 30, 1968).

In the Southeast, annual sales of corrugated containers were over \$188,000,000 per year. The four largest companies had about 45% of the total, and the shares of other defendants were as low as 1/4%, without any evidence of dominance by any company or group of companies (Par. 6, Ex. I, PX-1 [Tr. Jan. 26, 1966 p. 104] [App. 927-8]). This is not a concentrated market permitting disregard of the fact that competition works best when it is informed.**

* How the plaintiff can make the concession that at least *sometimes* the conduct here in issue is not unlawful, and yet argue for a *per se* rule of illegality which would dispense with proof of effect in this or any other case, is never explained.

How the plaintiff can stipulate that price information is "vital" to effective competition and at the same time claim that receiving it is a *per se* violation of the Sherman Act whenever it comes from the lips of a competitor even though it is used in exactly the same way as when received from a customer, is also left without explanation.

** The only available published statistics, derived from census data, show that there was no trend toward concentration in the corrugated container industry nationally from 1950 to 1958:

(continued on following page)

There is no evidence, or even a suggestion, that the buyers were ever in any inferior bargaining position vis-a-vis the sellers. The evidence is the other way around.

Nor are there the requisite indicia of market power in any "in" supplier group. The plaintiff concedes that entry is inexpensive, and that in fact the number of competitors has increased at a rapid rate (F. 9 [App. 487], F. 11 [App. 488-9]). There is no reason to consider this as other than a fully competitive market, except that for the plaintiff to face up to this would be to concede that there is not even a theoretical legal or economic reason to challenge the conduct of the defendants, particularly as the plaintiff does not disagree with the findings below that this market is highly competitive and characterized by vigorous price competition.

Plaintiff argues also that the demand in this industry is highly inelastic, leaving no option to the buyer to "withdraw from the market if the price is too high" or to obtain "an attractively low price" (Br. p. 28) through an increase in his volume. But so long as the purchaser has numerous alternate sources of supply, both actual and potential, he has a clear and ever present opportunity to withdraw from

Per cent of value of shipments accounted for by—

	<i>4 largest companies</i>	<i>8 largest companies</i>	<i>20 largest companies</i>
1950	24%	35%	51%
1954	23	37	56
1958	21	36	55

Sources: 1950: FTC, Report on Industrial Concentration and Product Diversification in the 1,000 Largest Manufacturing Companies: 1950, at 182 (1957); 1954: Senate Subcommittee on Antitrust and Monopoly, Report on Concentration in American Industry, 85th Cong., 1st Sess. 48 (1957); 1958: Bureau of the Census, Report to the Subcommittee on Antitrust and Monopoly on Concentration Ratios in Manufacturing Industry: 1958, at 127 (1962).

one supplier and increase his volume to another to obtain a price advantage—and this was done continuously (F. 17 [App. 490]).

Plaintiff argues in the abstract that “maintenance of some measure of uncertainty as to competitors’ prices for specific orders is essential to insure that individual pricing decisions will result in the setting of a *truly competitive price*.” (Br. pp. 29-30) (emphasis added). But plaintiff’s assumption that a *truly competitive price* will result only when the supplier is required to determine his price without information as to what prices are available from competitors ignores the agreed findings that in this market, absent price information, a supplier or prospective supplier often quoted prices higher than those charged or quoted by competitors and that in order to compete effectively there is a vital need for information as to the available price alternatives (F. 19(a) [App. 493], F. 19(e) [App. 493]).

Plaintiff’s assumption that knowledge of the buyer’s price alternatives lessens the *incentive* of the supplier to reduce prices is equally at war with the agreed findings. Although purchasers do not generally change suppliers unless offered a lower price by another supplier, each defendant annually experienced the loss of large numbers of customers and of particular orders to other customers, as well as substantial gains both in new customers and in sales to retained customers (F. 17 [App. 490]). There was a continuous downtrend in prices while there were increases in the prices of other commodities and in costs of manufacture of corrugated containers (DX-6, p. 1 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III p. 1]) (F. 15 [App. 489-90]). Plaintiff’s attempt to depict this as a market in which there was no incentive to reduce prices is thus utterly unrealistic.

(b) The proof as to the purpose of each defendant in occasionally giving or requesting price information

When it comes to discussing purpose, the plaintiff has similar trouble with the facts. The brief seizes on isolated words and phrases in the deposition testimony of a few employees of some of the defendants.* These witnesses were deposed by the plaintiff but they were not cross-examined on the issue of purpose because, after their direct examinations, the plaintiff stipulated what the purpose was. The plaintiff stipulated before the conclusion of the depositions that "each defendant considered the price which [a] purchaser had most recently been charged or quoted for corrugated containers to be pertinent marketing

* For example, plaintiff claims that a witness "testified that without price information from competitors it was impossible for him to raise prices without losing customers." (Br. p. 31) Not only does plaintiff misread the witness' testimony but in the process it completely ignores the finding of fact based on that testimony, to which it fully agreed. That finding is:

"187. In the fall of 1961, Mead attempted to accomplish a general increase in its corrugated container prices. Several competitors also attempted to raise their prices at about the same time. Customers were not a dependable source of information as to the prices offered by competing suppliers. Without accurate market price information, when a customer stated that other corrugated box manufacturers had not increased their prices, Mead's sales personnel could either increase Mead's price as instructed and take the chance of losing the account, or keep the price at a level which the customer claimed he was getting from other suppliers and be sure to keep the account. Mead continued to lose position with its customers and it got to be an untenable situation. Mead thereafter temporarily relaxed, to a limited extent, as described in Finding 186, its previous prohibition against requesting and furnishing price information from or to competitors, in order to permit Mead employees to seek information as to market price levels in accounts for which Mead was competing." [App. 534-5]

Thus this is really an example of a supplier pricing itself out of the market and thus being unable to compete effectively in the absence of accurate market information.

information and considered it beneficial to have such information" (Par. 11, Ex. I, PX-1 [Tr. Jan. 26, 1966 p. 104] [App. 930]; F. 27 [App. 496]); and that it is "necessary for each supplier to meet or be below competition in order to retain its customers . . . [or] to obtain new customers or additional business from existing customers." (Par. 12, Ex. I, DX-1 [Tr. Jan. 27, 1966 p. 227] [App. 960]; F. 25 [App. 496])

Furthermore, after trial, the plaintiff specifically agreed to a proposed finding as to each defendant that it "requested price information from other defendants *in order to aid it in making informed pricing and marketing decisions.*" (e.g., F. 76 [App. 511], D.P.F. A-12 [App. 89-90]) (emphasis added)

Thus, the purpose of each defendant, as agreed by the plaintiff, was to obtain aid in making its own individual pricing and marketing decisions, determined in the exercise of its own business judgment, taking into account many factors other than competitors' prices. The plaintiff cannot now tenably urge a different purpose.*

(c) The proof as to the effect of price communication upon price competition

The plaintiff's approach to the question of effect is illuminated by its argument that defendants' evidence "cannot disprove Plaintiff's critical contentions." (Post-Trial Brief, p. 22) In other words, the plaintiff took the position below that, having presented an academic theory that knowledge necessarily restricts competition, the burden was on the defendants to disprove the theory, and that such disproof could not be in the form of evidence but would also

* Plaintiff's statement that the defendants have not suggested any reason for the requesting of price information other than "chilling the vigor of price competition" (Br. p. 32) reveals its need to disregard facts inconsistent with its theoretical arguments.

have to be in the form of theory which assumed the plaintiff's assertions even though they were contrary to the facts.

Thus, the plaintiff claimed that a defendant, learning from a competitor what its last price had been to a particular customer, competes less vigorously for that customer. The plaintiff made no attempt to support its theory by evidence but insists that this is the natural effect of knowledge on pricing behavior. The defendants, however, met the plaintiff's theory with concrete evidence that a defendant acted in exactly the same way whether it received such price information from a competitor or, as was much more usual, from the customer himself.

Defendants undertook to prove a negative, i.e., that price competition was not restricted and not tempered. Of course, considering that the defendants in the aggregate must have quoted a million prices to the 10,000 purchasers of corrugated containers over the eight years of the alleged conspiracy, it was impossible to prove the negative with evidence as to each transaction. However, the defendants' unchallenged evidence was sufficiently compelling to leave no margin for doubt.

The evidence shows that a very large percentage of all purchasers of corrugated containers in the Southeast changed suppliers during a typical year because a new supplier cut the previous supplier's price (F. 17 [App. 490]). This is so inconsistent with an asserted agreement to restrict price competition that the plaintiff's theory cannot survive, particularly in the absence of any contrary proof, and the plaintiff could not prove even a single instance, in a million transactions, where a defendant tempered its price

competition as a result of the requesting or furnishing of price information.

The defendants took into account the possibility that an agreement to restrict price competition might be inferred if the prices of the various defendants were uniform or price movements were parallel as among the defendants. The defendants' evidence, stipulated by the plaintiff to be correct, proved exactly the contrary, and the district court found (and the plaintiff does not attack this finding) that the defendants' evidence demonstrated the absence of any general uniformity, harmony, stability, or parallelism in prices, and that price trends varied widely among the several defendants both as to direction and as to degree (F. 21 [App. 494]).

Addressing the possibility that the plaintiff would attempt to draw some inference of restricted price competition if price levels during the period of the alleged conspiracy were generally increasing in relation to prices of other commodities, the defendants adduced evidence on that score too. As a result, the plaintiff conceded and the district court found that the trend of corrugated container prices during the period of the alleged conspiracy was downward, while the defendants' costs and price levels of other commodities generally were rising (Par. 7, Ex. I, DX-1 [Tr. Jan. 27, 1966 p. 227] [App. 958-9]; F. 15 [App. 489-91]).

The plaintiff now asks this Court, as it asked the district court, to assume that the facts were as the plaintiff imagines, rather than as the evidence proves, and to find as a purely theoretical conclusion that price competition was actually restricted.

SUMMARY OF ARGUMENT

The stipulations of the plaintiff and the other evidence irrefutably prove that there was no agreement or combination to exchange price information, and therefore the plaintiff's first question on appeal must be answered in the negative.

As the district court found, relying upon stipulated facts and agreed findings: Each defendant was at all times free to request or furnish, or not request or furnish, information to another defendant as to prices for corrugated containers, and whether to request or furnish such information was the individual decision of each defendant (F. 28 [App. 496-7]). The extent and frequency with which such information was requested or furnished varied among the defendants, and the information was not always furnished (F. 32 [App. 498], *e.g.*, F. 239 [App. 544]). There was also lack of uniformity in the substance and scope of the information when furnished (273 F. Supp. at 59 [App. 566]). The district court properly found, on these facts, that there was no agreement that any defendant would furnish price information on request (F. 33 [App. 498]). It is no substitute that, occasionally, each defendant did so, but without being bound by agreement to do so.

Moreover, the plaintiff conceded below that even if it proved an agreement to furnish price information on request, its complaint would have to be dismissed because such an agreement is not itself illegal (Transcript of Conference with Attorneys, December 20, 1965, p. 46 [App. 34]). The plaintiff clearly understood then that such an agreement would not constitute a restraint of trade in the absence of a concert of action as to the use to be made of that information, limiting the freedom of the defendants individually to determine the prices of their product.

Thus, the district court had no need to reach the plaintiff's second question, whether the alleged agreement had the effect of restraining price competition. Nevertheless, the district court did make extensive findings on the question whether there was any restriction of price competition, and these findings are unassailable here since they are based on stipulated facts and there is no evidence to the contrary. It was found that there was no restraint on price competition, and the plaintiff concedes that no defendant, to any extent or in any manner whatsoever, surrendered its freedom to make every pricing decision independently and in the exercise of its own business judgment and in its own best interest, taking into consideration all of the factors which an independent seller would consider relevant (F. 22 [App. 494-5], F. 28 [App. 496-7]).

The plaintiff would now repudiate its concession below that an agreement to exchange price information, standing alone, is not unlawful; it argues in this Court that an agreement to exchange price information, without more, is a *per se* violation of the Sherman Act and thus can never be justified. It has been forced to that position because the evidence is overwhelming that in fact there was no restriction of price or other competition. The plaintiff is driven to argue that as a theoretical matter such restriction should be inferred even though the facts establish the contrary.

The plaintiff argues here that it may offer no evidence of its own and disregard all the defendants' evidence, and instead rely upon asserted inferences of fact and allegedly logical conclusions from such inferences. However, inferences and conclusions are no help when the premises upon which they are based are not only unsup-

ported, but directly contradicted, by the evidence, the stipulations of the plaintiff at trial, and the findings of the district court.

In the absence of any evidence of any restriction on competition, and in the face of agreed facts establishing that there was no such restriction, there is no basis for plaintiff to ask this Court to decide that the conduct in question has such a pernicious effect and is so devoid of redeeming qualities that it should be added to the list of *per se* violations of the Sherman Act.

We agree with the plaintiff that an informed pricing decision might well be different from an uninformed one. We differ with the plaintiff when it claims that it is *per se* illegal to obtain from a competitor information vital to effective competition which is used only as an aid in making intelligent individual pricing decisions, and that is the only issue on this appeal.

ARGUMENT

The requesting by a supplier from another supplier of the latter's most recent price for a specific product and the giving of such information upon request without any agreement or concert of action with respect to the price to be charged or quoted that customer by either of them, where in all instances the determination as to the price to be charged or quoted was each supplier's individual decision, does not constitute a contract, combination, or conspiracy in restraint of trade or commerce proscribed by Section 1 of the Sherman Act.

A. There was no agreement to exchange price information

This case was tried on the flat concession by plaintiff's counsel in open court that:

"If the Government had charged in its complaint that the parties had agreed to exchange price information, period, it would have no case; the complaint would be subject to dismissal." (Transcript of Conference with Attorneys, December 20, 1965, p. 46 [App. 34])

Thus the question whether there was an agreement to exchange* price information is of only negative significance, although the concession quite naturally influenced

* The word "exchange" was defined for purposes of this case during the depositions (CX-4, pp. A-136 [App. 613-4], A-158 [App. 623], A-175 [App. 600] [Tr. Jan. 26, 1966 p. 138]) to mean "that the witness had either given past market information or received past market information from a competitor." Plaintiff acknowledged this definition in its district court brief (p. 6, n. 1) [App. 587], but plaintiff nevertheless uses, obviously for semantic advantage, the term "exchanging prices" throughout its brief in this Court to describe the furnishing of price information on request. This artificial usage must constantly be kept in mind. The evidence is clear that the party requesting price information did not, in exchange for the information received, state its own price to that customer.

the defendants' willingness to dispense with detailed trial testimony on that score. In any event, the record precludes the making of any inference that there was any agreement or combination. The findings on this score are supported by the stipulated testimony of each officer or employee of each defendant responsible for pricing that it was his individual decision whether or not to request or furnish price information (Par. 17(c), Ex. I, DX-1 [Tr. Jan. 27, 1966 p. 227] [App. 962-3], F. 35 [App. 498]), as well as by the concession that there is no evidence that any employee of any defendant ever discussed with any employee of another defendant the desirability of furnishing price information, or the fact that price information had been or was being communicated, or the frequency of such communication, or the requesting or failing to request such information, or the method of communicating, or the action to be taken or not to be taken with respect to any information (D.P.F. 40 [App. 74], F. 34 [App. 498]).

Defendants do not quarrel with the familiar cases which the plaintiff cites to the effect that it need not prove an express agreement. Defendants contend that the evidence of retention of freedom and individual action is so overwhelming as to preclude any inference of agreement.*

* Plaintiff would argue that this stipulated freedom "was merely the freedom to withdraw from the combination whenever a defendant concluded that the benefit of receiving information no longer outweighed the detriment of giving it." (Br. p. 22) This patent attempt by plaintiff to lift itself by its bootstraps is not worthy of serious consideration. Obviously a supplier is not free at all times to make an individual decision if such freedom is dependent upon withdrawal from a prior combination or conspiracy, and the district court's findings cannot be explained away in this manner. Before a withdrawal can take place, there must be an existing combination, and since the district court found no such combination it cannot be claimed that the district court intended so strained a construction of its findings, or that plaintiff so intended at the time it entered into the stipulation.

Here the plaintiff relies solely upon the fact that each of the defendants upon occasion gave or received price information as proof that each did it pursuant to agreement. No case that we know of has ever held that from such evidence alone a Sherman Act agreement, combination or conspiracy can be inferred.

B. An agreement to exchange price information, without any agreement for concerted use of such information, would not be a violation of the Sherman Act

But even assuming, arguendo, that it could be inferred that the actions of the defendants in occasionally giving or receiving price information were pursuant to agreement, what the plaintiff undertook to prove, and failed to prove, was necessarily something more. The plaintiff, before trial and consistently with the concession quoted above, stipulated:

"The plaintiff does not contend that the facts contained in the record to be submitted as the plaintiff's affirmative case evidence an express agreement to exchange price information or to restrict competition. However, the plaintiff contends that from the facts contained in such record the Court may infer an agreement to exchange information as to the most recent quoted price for corrugated containers and that from such agreement, together with such facts, the Court may infer an agreement to restrict competition." (DX-1, p. 3 [Tr. Jan. 27, 1966 p. 227] [App. 952-3])

The plaintiff did not, however, offer any proof of any agreement as to the use which would be made of the price information received from a competitor. (Indeed, in an elaborate footnote attempting to explain away its concession that an agreement merely to exchange price in-

formation would not be unlawful, the plaintiff claims that the court below was wrong in stating that the plaintiff had undertaken the burden of proving an agreement to use such information for the purpose or with the effect of restricting price competition.) (Br. pp. 16-17) Nor did the plaintiff offer any proof that competition was in fact restricted, claiming instead that, even in the face of contrary evidence, it must be assumed that the "necessary" effect of knowledge as to prices is to restrict competition (Br. pp. 27, 28).

It is here that issue is joined, for the plaintiff misreads this Court's decisions, none of which has ever held that the mere giving or receiving of price information without proof of concert as to the use of that information or proof of an actual restrictive effect upon price competition is unlawful. The plaintiff is thus seeking a new *per se* rule of law previously denied to it.

1. The Case Law

In the two cases involving price communication between competitors upon which the plaintiff relies, *American Column & Lumber Co. v. United States*, 257 U.S. 377, and *United States v. American Linseed Oil Co.*, 262 U.S. 371, an exchange of price information was held to be unlawful because it was a part of an overall agreement to fix or tamper with prices. These holdings were based upon persuasive evidence of agreements that took away freedom of action. In *American Column & Lumber*, the Court said:

"Genuine competitors do not make daily, weekly and monthly reports of the minutest details of their business to their rivals, as the defendants did; they do not contract, as was done here, to submit their books to the discretionary audit and their stocks to the dis-

cretionary inspection of their rivals for the purpose of successfully competing with them; and they do not submit the details of their business to the analysis of an expert, jointly employed, and obtain from him a 'harmonized' estimate of the market as it is and as, in his specially and confidentially informed judgment, it promises to be. This is not the conduct of competitors but is so clearly that of men united in an agreement, express or implied. . . ." (257 U.S. at 410)

The evidence in *American Column & Lumber* was that the formal "Plan" adopted there required each member to make six reports to the Secretary: a daily report on sales, a daily shipping record, a monthly production report, a monthly stock report, a report of price lists and all changes in them, and inspection reports as to the grades of stocks on hand. Each was a detailed report and moreover, each of these reports was "subject to complete audit by representatives of the association." Punishment was provided for non-compliance (257 U.S. at 394-5).

None of these factors is present in this case. There was no "Plan" and no compulsion to give or receive price information. Defendants did not audit each other's books and records or have any access to the "minutest," or, for that matter, any other business details of their rivals. No fines or penalties were assessed for a failure or refusal to furnish price information, or for furnishing of inaccurate, incomplete or misleading information, or most importantly, for failure to adhere to the prices requested or received. There was no policing by the defendants.

In *United States v. American Linseed Oil Company*, 262 U.S. 371, the other case relied upon by plaintiff, the Court similarly found and condemned an agreement because it deprived the parties of their freedom of action in making

pricing decisions. In that case the twelve corporate defendants, who manufactured, sold and distributed linseed oil, had agreed among themselves to exchange on a daily basis, in a detailed and systematic fashion, full particulars about their respective businesses. As in *American Column & Lumber*, all reports were subject to full audit. The Court found that there was an agreement by the participating companies to adhere to published prices and to report immediately the details of any deviations. Furthermore, failure to comply with any of the agreed requirements resulted in forfeitures of money deposited and penalties, and an extensive policing apparatus was established. Upon this record, the Court stated:

"The record discloses that defendants, large manufacturers and distributors—powerful factors in the trade—of commodities restricted by limited supplies of raw material (linseed), located at widely separated points and theretofore conducting independent enterprises along customary lines, *suddenly became parties to an agreement which took away their freedom of action* by requiring each to reveal to all the intimate details of its affairs. All subjected themselves to an autocratic Bureau, which became organizer and general manager, paid it large fees and deposited funds to insure their obedience. *Each subscriber agreed to furnish a schedule of prices and terms and adhere thereto—unless more onerous ones were obtained—until prepared to give immediate notice of departure therefrom for relay by the Bureau. Each also agreed, under penalty of fine, to attend a monthly meeting and report upon matters of interest to be there discussed; to comply with all reasonable requirements of the Bureau; and to divulge no secrets.*" (262 U.S. at 389) (emphasis added)

In our case we have no agreement, no "autocratic Bureau," no "organizer" or "general manager," no "large fees or deposited funds" to insure obedience, no fines, no promises "to divulge no secrets." And, most important, there is no proof that any defendant here ever agreed to "adhere" to any furnished price or ever entered into any arrangement that took away its freedom of action. The contrary is stipulated (Par. 70, Ex. I, PX-1 [Tr. Jan. 26, 1966 p. 104] [App. 948]; F. 28 [App. 496-7]).

With respect to the effect upon competition of the challenged practices in *American Column & Lumber* and *Linseed Oil*, on the one hand, and in the present action, on the other, two entirely divergent fact patterns emerge. In *American Column & Lumber* the record revealed that the prices increased to an unprecedented extent (as much as 343%), and the Court found that the united action of the defendants "contributed greatly to this extraordinary price increase" (257 U.S. at 409). Similarly, in *Linseed Oil* the Supreme Court found that "the prices of oil became more stable" (262 U.S. at 387) after each defendant agreed to furnish a schedule of prices and adhere thereto. On the other hand, in the case at bar the uncontradicted evidence establishes widely fluctuating prices for corrugated containers, a highly competitive industry, and sharp variations among competitors in prices quoted and charged, as well as a downward trend in prices despite rising costs of manufacture (F. 15 [App. 489-90], F. 21 [App. 494]).

Thus, in neither of the cases relied upon by plaintiff was there any doubt that there was an express agreement to exchange price information, that it was merely part of a further agreement as to the use to be made of that information, and that production and price competition were in fact, not in theory, restricted. The plaintiff is plainly wrong

in asserting that these two cases "recognized the unlawful tendency toward restraint in price competition" of knowledge as to prices and "recognized the necessary effect of such knowledge" was "suppression of competition." To the contrary, in neither case was any *per se* rule invoked; it was not presumed that competition had been restrained; rather the plaintiff offered proof of an actual restraint upon competition, of an actual effect upon price, which it has been unable to do in this case.

Any doubt as to the proper construction of those cases is dispelled by reference to the later cases in this Court involving price communication, in which the plaintiff expressly sought and was expressly denied a rule of *per se* illegality based upon the alleged "natural tendency" of knowledge to restrict price competition.

In *Maple Flooring Mfrs. Assn. v. United States*, 268 U.S. 563, the Court upheld an agreement for extensive exchange of market information by 22 corporate competitors producing 70% of the maple, birch and beech flooring because it found no agreement or concerted action with respect to the use to be made of the information exchanged.

In *Maple Flooring* the Association digested and reported to all participants information contained in weekly summaries filed with it by each member showing dates of sales, quantity of shipments, types and grade of products, delivery details, prices, average freight expenses and rates of commission. Additionally, monthly reports were filed on volumes of production, new orders booked, inventory, and the number of orders unfilled. The Court rejected the plaintiff's contention that the statistical gathering and dissemination of the Association was so

extensive that each participating company knew the exact condition of the business of every other member and therefore concerted action must necessarily have resulted.

The plaintiff's argument that the extent of the communication among the defendants was inherently anticompetitive, the very same argument upon which the plaintiff relies here, was disposed of as follows:

"We do not conceive that the members of trade associations become such conspirators merely because they gather and disseminate information, such as is here complained of, bearing on the business in which they are engaged and make use of it in the management and control of their individual businesses; nor do we think that the proper application of the principles of decision of *Eastern States Retail Lumber Association v. United States* or *American Column & Lumber Co. v. United States* or *United States v. American Linseed Oil Company* leads to any such result. The court held that the defendants in those cases were engaged in conspiracies against interstate trade and commerce because it was found that the character of the information which had been gathered *and the use which was made of it* led irresistibly to the conclusion that they *had resulted*, or, would necessarily result, *in a concerted effort of the defendants to curtail production or raise prices* of commodities shipped in interstate commerce. The unlawfulness of the combination arose not from the fact that the defendants had effected a combination to gather and disseminate information, but from the fact that *the court inferred from the peculiar circumstances of each case* that concerted action had resulted, or would necessarily result, in tending arbitrarily to lessen production or increase prices.

"Viewed in this light, can it be said in the present case, that the character of the information gathered

by the defendants, or the use which is being made of it, leads to any necessary inference that the defendants either have made or will make any different or other use of it than would normally be made if like statistics were published in a trade journal or were published by the Department of Commerce, to which all the gathered statistics are made available? The cost of production, prompt information as to the cost of transportation, are legitimate subjects of enquiry and knowledge in any industry. So likewise is the production of the commodity in that industry, the aggregate surplus stock, and the prices at which the commodity has actually been sold in the usual course of business." (268 U.S. at 584-85) (emphasis added)

Clearly, in this case, where there was far less frequency of communication, where plaintiff admits that it was impossible for it to find any evidence that the communications restricted price competition, and where the evidence established that price competition was not restricted, plaintiff's challenge to defendants' conduct must also fail.

The Court in *Maple Flooring* clearly set forth the rule applicable here—the burden of which the plaintiff expressly refuses to accept—that it is not an agreement to exchange price information, but rather an agreement for concerted action with respect to the use of that information, which is to be condemned:

"We realize that such information, gathered and disseminated among the members of a trade or business, may be the basis of agreement or concerted action to lessen production arbitrarily or to raise prices beyond the levels of production and price which would prevail if no such agreement or concerted action ensued and those engaged in commerce were left free to base individual initiative on full information of the essential elements of their business. . . . But in the absence of

proof of such agreement or concerted action having been actually reached or actually attempted, under the present plan of operation of defendants we can find no basis in the gathering and dissemination of such information by them or in their activities under their present organization for the inference that such concerted action will necessarily result within the rule laid down in those cases." (268 U.S. at 585-86)

Maple Flooring thus did not turn upon the specificity of the price information involved as plaintiff suggests but upon the lack of agreement as to the use to be made of it and upon the retention by the defendants of freedom to act individually.

Again in *Cement Manufacturers Protective Assn. v. United States*, 268 U.S. 588, decided the same day as *Maple Flooring*, the Court upheld a program for the exchange of trade statistics, concluding that the evidence did not show that the arrangement had the purpose or effect of restraining trade. There too the plaintiff asserted that uniformity of prices was the natural and necessary result of the defendants' activities. As in our case it did not, however, prove any agreement setting or limiting prices. Commenting on the basic problem of the case the Court stated:

"The two essential elements in the conspiracy to restrain commerce charged therefore are (a) the gathering and reporting of information which would enable individual members of the Association to avoid making deliveries of cement on specific job contracts which by the terms of the contracts they are not bound to deliver, and (b) the gathering of information as to production, price of cement sold on specific job contracts and transportation costs. . . .

"That a combination existed for the purpose of gathering and distributing these two classes of information is not denied. . . .

"[F]or reasons stated more at length in our opinion in *Maple Flooring Association v. United States, supra*, we cannot regard the procuring and dissemination of information which tends to prevent the procuring of fraudulent contracts or to prevent the fraudulent securing of deliveries of merchandise on the pretense that the seller is bound to deliver it by his contract, as an unlawful restraint of trade even though such information be gathered and disseminated by those who are engaged in the trade or business principally concerned.

"Nor, for the reasons stated, can we regard the gathering and reporting of information, through the co-operation of the defendants in this case, with reference to production, price of cement in actual closed specific job contracts and of transportation costs from chief points of production in the cement trade, as an unlawful restraint of commerce; even though it be assumed that the result of the gathering and reporting of such information tends to bring about uniformity in price.

"Agreements or understanding among competitors for the maintenance of uniform prices are of course unlawful and may be enjoined, but the Government does not rely on any agreement or understanding for price maintenance. It relies rather upon the necessary leveling effect upon prices of knowledge disseminated among sellers as to some of the important factors which enter into price. It is conceded that there is a substantial uniformity of price of cement. Variations of price by one manufacturer are usually promptly followed by like variation throughout the trade.

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"For reasons stated in *Maple Flooring Association v. United States, supra*, such activities are not in them-

selves unlawful restraints upon commerce and are not prohibited by the Sherman Act." (268 U.S. at 602-06)

The evidence here similarly establishes that the communication of price information was often for the purpose of verifying information obtained from customers (273 F. Supp. at 59 [App. 565-6]). More important, the rationale of *Cement Manufacturers* is applicable here as the evidence fails to show that price information obtained by any defendant from a competitor ever had any effect on prices except for its natural influence on individual action. And *Cement Manufacturers* also disposes of plaintiff's attempt to distinguish *Maple Flooring* on the ground that the price information involved in that case did not "identify buyer or seller" (Br. p. 39), for the price information in the *Cement* case did involve the "price of cement sold on specific job contracts" (268 U.S. at 602).

That the plaintiff is arguing for a new *per se* rule against the giving or receiving of price information regardless of the circumstances is explicitly conceded in a footnote discussing *Cement Manufacturers* where it concludes that the need for protection against fraudulent misrepresentations is not "a defense to an otherwise *per se* violation of the Sherman Act." * The heart of the plaintiff's argument on this score appears to be its proposition:

* That the plaintiff necessarily contends for a *per se* rule outlawing the giving or receiving of price information in *all* circumstances is made clear when the evidence is examined as it relates to a single defendant. St. Joe was not a member of the Fibre Box Association (F. 61 [App. 507]). It attended no meetings with its competitors (F. 302-326 [App. 554-63]) (D.P.F., p. 115, agreed to by plaintiff [App. 168]). While St. Joe competed with all but three of the defendants (F. 221 [App. 541]), it gave to or received price information from but a few of them (F. 225 [App. 541-2])—and then only on infrequent occasions (F. 224 [App. 541]), by telephone (F. 227 [App. 542]),

"... unlike the defendants in *Cement Manufacturers*, the defendants here have no legal right to such information [as to prices that had been offered by competitors] from customers unwilling to give it, nor do they have a legal right to base all pricing decisions on full knowledge of competitors' prices." (Br. p. 40)

Defendants here had as much "legal right" to information as did the defendants in *Cement Manufacturers* for the options granted there were "free," merely treated as binding by trade practice. Defendants here clearly had as much "legal right" to protect themselves from misrepresentation by their customers as did the defendants there.

In making this argument, the plaintiff, among other things, also overlooks the Robinson-Patman Act and the necessary effect on its argument for a broad *per se* rule of well recognized decisions under that Act. A price discrimination otherwise violative of Robinson-Patman can be justified by a showing on the part of the seller that his lower price was made in good faith to meet an equally low price of a competitor. The burden of making such a showing is, of course, on the seller and a heavy burden it is.

In *Federal Trade Commission v. A. E. Staley Mfg. Co.*, 324 U.S. 746, 758, this Court upheld the Federal Trade Commission in a finding that the sellers had not sustained the burden of rebutting the prima facie case of price discrimination since

and in terms of an end price charged in a past, closed transaction (F. 226 [App. 542]). The over 400 salesmen's call reports in evidence from St. Joe files (a representative sampling of thousands of similar reports) record the vigor of the price competition that existed between that company and the other defendants (including those with which, on infrequent occasion, it communicated a past price) for the business of specific customers (DX 620 to 1042 [Tr. Jan. 27, 1966 p. 227]).

"... they had failed to show that their lower prices were 'made in good faith to meet an equally low price of a competitor.' The facts as stipulated were only that the discriminations were made in response to verbal information received from salesmen, brokers or intending purchasers, without supporting evidence, to the effect that in each case one or more competitors had granted or offered to grant like discriminations. It is stipulated that respondents, 'believing such report to be true, has then granted similar' price discriminations. The record contains no statements by the persons making these reports and *discloses no efforts by respondents to investigate or verify them*, and no evidence of respondents' knowledge of their informants' character and reliability." (emphasis added)

From *Staley* and the many cases which have followed it over the years, it is clear that sellers not only have a legal right but a duty at times to verify information as to prices which their customers claim have been offered to them by competitors.* The requirement of the Robinson-Patman Act that in appropriate circumstances a seller must verify a report of a price in order to establish that it was in good faith attempting to meet a competing seller's price demonstrates clearly that the mere fact of such price communication is not to be considered a *per se* violation of the Sherman Act.

The plaintiff's reliance upon *Sugar Institute, Inc. v. United States*, 297 U.S. 553, is equally misplaced. There, this Court struck down an exchange program under which each member was required to *adhere* to previously an-

* The district court found (F. 29 [App. 497]) and plaintiff concedes (Br., p. 24 n.14) that defendants sought information from competitors only when reliable information was not available from their own records or from customers.

nounced prices. By industry agreement all prices were announced in advance of their effective dates; however, the Court found no illegality in the announcement of prices, but only in the requirement that each member adhere without deviation to the terms publicly announced. It held:

"The vice in that agreement was not in the mere open announcement of prices and terms in accordance with the custom of the trade. That practice which had grown out of the special character of the industry did not restrain competition. The trial court did not hold that practice to be illegal and we see no reason for condemning it. The unreasonable restraints which defendants imposed lay not in advance announcements, but in the steps taken to secure adherence, without deviation, to prices and terms thus announced. It was that concerted undertaking which cut off opportunities for variation in the course of competition however fair and appropriate they might be." (297 U.S. at 601)

Accordingly, this Court modified the decree which had been entered below by striking out injunctive provisions which would have prohibited "systematically reporting to or among one another or competitors," whether directly or through a trade association, "information as to current or future prices" and "giving any prior notice of any change or contemplated change in prices . . . or relaying, reporting or announcing any such change in advance thereof." The Court said:

"Such reporting or relaying, as we have said, permits voluntary price announcements by individual refiners, in accordance with trade usage, to be circulated, and subject to the restrictions imposed by the decree does not appear to involve any unreasonable restraint of competition." (297 U.S. at 603-04)

In the present case, of course, there was no agreement for adherence, undeviating or otherwise, to prices previously announced nor any of the other facts that led the Court in *Sugar Institute* to conclude that there was in that case, in addition to a lawful agreement to exchange price information, an unlawful agreement for joint use of such information.

2. The Consent Decree

It was doubtless upon the authority of these decisions that the plaintiff agreed to the entry of the 1940 Consent Decree in the corrugated container industry, with full knowledge of the operations of this industry: (DX-2 [Tr. Jan. 27, 1966 p. 227] [App. 1004-13]) Many of the defendants either are parties to or have become bound by that decree, and each knew of and relied upon it (F. 43 [App. 501]).

That decree provided in pertinent part that the parties remained free to "cooperate" in "gathering" and "disseminating" price information so long as they did so "without . . . reaching or attempting to reach any agreement or any concerted action with respect to prices." (F. 44 [App. 501-2]).

We submit that the plaintiff, in entering into the 1940 Consent Decree, could not have believed that requesting or furnishing price information was a *per se* violation of the antitrust laws and at the same time have so carefully carved such conduct out of the prohibitions of the decree and referred to a "right" to "cooperate" in this regard. While the plaintiff intended in the 1940 Consent Decree to lay down guidelines for positive "steps" and for an industry "course of conduct" which not only would redound to the public welfare, but which also would actively promote "free competition in an orderly market," at the

same time and in the same Consent Decree the plaintiff recognized that requesting or furnishing price information would not without more violate the antitrust laws (F. 41, F. 42 [App. 500-01]).

Whatever "natural effect" might flow from the furnishing or requesting of price information must have been anticipated at the time of entry of the Consent Decree, since "natural effect" had been previously discussed in this Court's decisions. A purpose to consider the information communicated in arriving at individual price decisions was inherent in the very process of furnishing or requesting it and had been held lawful so long as freedom of action is actually maintained.

Thus the very existence of the Consent Decree precludes the making of an inference of illegal purpose or of unlawful effect from the mere fact of giving or receiving price information. The Consent Decree is a close and binding precedent upon the legality of the requesting or furnishing of price information and an admission by the plaintiff of the legality of such conduct, and it has been relied upon and complied with in good faith by each of the defendants* (F. 43 [App. 501]).

* The plaintiff only recently reaffirmed its recognition in the 1940 Consent Decree of the legality of the requesting or furnishing of price information here in issue. In *United States v. Union Bag-Camp Paper Corporation*, 1966 Trade Cas. ¶71,698 (S.D.N.Y.), a consent decree was entered on November 17, 1965, which enjoined agreements or combinations to communicate prices only if the price or quotation was communicated "in advance of its being disseminated to the trade or quoted to individual customers." There is certainly no evidence that any defendant in this case ever furnished either a price or a quotation in advance of its dissemination to the trade or an individual customer.

Disregarding this Court's decisions and repudiating the 1940 Consent Decree, plaintiff argues in its brief that this Court should now rule that the conduct of these corrugated container manufacturers in communicating price information amounts to a *per se* violation of the Sherman Act. No court has ever so held. In every case involving prices in which there has been a holding of *per se* illegality, this Court has found an agreement or combination or conspiracy to adhere to prices or to maintain prices or to use price information in a manner restrictive of competition, none of which is present here.*

Reference to *United States v. Socony-Vacuum Oil Co., Inc.*, 310 U.S. 150, decided just two weeks after the 1940 Consent Decree, only serves to underscore this rule. The decision in *Socony* expressly recognized the basic distinc-

* Cases subsequent to *Sugar Institute* have consistently held that unlawful agreements must encompass not only an exchange of information but a common purpose to employ such data in a concerted effort to insulate price levels from market pressures: *Salt Producers Association v. F.T.C.*, 134 F.2d 354, 359 (7th Cir. 1943) held that the exchange of price information was forbidden only when "integral with a scheme to restrict competition, and used as an instrumentality therefor"; *United States Maltsters Association v. F.T.C.*, 152 F.2d 161 (7th Cir. 1945); *Milk and Ice Cream Can Institute v. F.T.C.*, 152 F.2d 478 (7th Cir. 1946); in *Tag Manufacturers Institute v. F.T.C.*, 174 F.2d 452 (1st Cir. 1949), a plan pursuant to which producers reported both list prices and all off-list transactions was upheld where participants had made no agreement to abide by the reported prices; *Morton Salt Company v. United States*, 235 F.2d 573 (10th Cir. 1956); in *Plymouth Dealers' Association of Northern California v. United States*, 279 F.2d 128, 134 (9th Cir. 1960), the court noted that "the printing of a price list alone" would not constitute a Sherman Act violation since such a violation would require "the formulation and distribution of a schedule of prices with the intent of establishing list prices at higher levels than Plymouth factory suggested prices"; in *United States v. Union Bag-Camp Paper Corporation*, 1965 Trade Cas. ¶71,378 at 80,618 (S.D.N.Y.), the court noted that the *per se* rule

tion between the agreement to gather and distribute price information which *Maple Flooring* had held to be legal and the agreement to tamper with prices which it was condemning:

“Nor are *Maple Flooring Mfrs. Assn. v. United States* and *Cement Mfrs. Protective Assn. v. United States*, *supra*, at all relevant to the problem at hand. For the systems there under attack were methods of gathering and distributing information respecting business operations. It was noted in those cases that there was not present any agreement for price-fixing. And they were decided, as indicated in the *Trenton Potteries* case on the express assumption that any agreement for price-fixing would have been illegal *per se*.” (310 U.S. at 217)

On the basis of a fair reading of all the prior cases, it seems clear that this Court has, despite several requests to rule to the contrary, consistently refused to hold that the communication of price information between competitors, absent any agreement to fix prices or to use such information to restrict competition, and with each competitor free to make—and actually making—its individual

does not apply to mere communications of price information among competitors:

“Furthermore, it has been held that the exchange and dissemination of trade information such as distribution costs and prices in actual sales of market commodities in the absence of a purpose to violate the antitrust laws is not unlawful *per se* and may even be salutary. See *Salt Producers Association v. Federal Trade Commission*, [1940-1943 TRADE CASES ¶ 56,261], 134 F.2d 354 (7th Cir. 1943); *Sugar Institute, Inc. v. United States* [1932-1939 TRADE CASES ¶ 55,107], 297 U. S. 553, 599 (1936); *Maple Flooring Ass'n v. United States*, 268 U. S. 563, 582. (1924).”

decision as to the price it will charge, is a *per se* violation of the Sherman Act.*

C. The requesting or furnishing of price information should not be added to the list of *per se* violations on a record devoid of proof of market effect and economic consequences

1. The decisions of this Court place a heavy burden of proof on plaintiff when it seeks a new rule of *per se* illegality

The question remains whether the plaintiff has established such a record in this case that this Court should now overrule its earlier decisions and extend the category of *per se* violations to include the conduct here in issue. Applying the teaching of *Northern Pac. R. Co. v. United States*, 356 U.S. 1, and *White Motor Co. v. United States*, 372 U.S. 253, the answer to that question depends upon whether the conduct involved has been shown by evidence to have such a "pernicious effect on competition" and so to "lack . . . any redeeming virtue" (356 U.S. at 5) that it is to be declared henceforth to be unlawful without inquiry as to purpose or effect. To decide that, however, the Court must know precisely what is "the actual impact of these arrangements on competition." (372 U.S. at 263) This Court observed in *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 178, that:

* The enduring vitality of the rule of *Maple Flooring* was recognized only three terms ago in *Joseph Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 45, where a unanimous Court observed:

"The bare compilation, without more, of price information on sales to wholesalers and retailers to support the affirmations filed with the State Liquor Authority would not of itself violate the Sherman Act. *Maple Flooring Assn. v. United States*, 268 U.S. 563, 582-586; cf., *American Column Co. v. United States*, 257 U.S. 377. . . ."

"... the area of *per se* illegality is carefully limited. We are reluctant to extend it on the bare pleadings and absent examination of market effect and economic consequences."

We submit that the failure of the plaintiff to offer any evidence as to the effect upon competition, its insistence that it can rely upon the "natural tendency" argument previously rejected by this Court, and the uncontroverted evidence offered by defendants upon which the court below found that price competition was not restricted, do not provide a proper foundation for the pronouncement of a new rule of law which would so profoundly affect long standing business practices. Once this Court has announced that a practice is *per se* illegal, proof of effect may in all future cases be dispensed with; but in this case, in which the Court is being asked to reverse itself and to determine for all time for all industries that receipt of price information from a competitor necessarily restricts price competition, the plaintiff should not be permitted to substitute speculation for proof.

2. The plaintiff's "effects" argument is based upon speculation

The plaintiff should not be free to speculate as to the defendants' margin of profit on sales of corrugated containers (Br. p. 42 and p. 42 n. 26), when it agreed that prices of corrugated containers were generally declining while costs as well as prices of other commodities were rising (F. 15 [App. 489-90]), and the plaintiff never sought to establish that profits were nevertheless high enough to support an inference of restricted competition.

Nor should the plaintiff repeatedly suggest in its brief that some unnamed purchasers might have preferred

that potential new suppliers bid in ignorance of the past price paid to existing suppliers (*e.g.*, Br. p. 34). With the names of all 10,000 customers in the Southeast, the plaintiff did not find one to testify to that effect (F. 20 [App. 493-4]). Without adducing any evidence on a point which the plaintiff now argues is vital, can it now ask this Court to accept its speculation with respect to facts which, if true, would have been easy to prove?

Rather than offering proof, the plaintiff argued below, and argues here, that the obtaining of price information from competitors had the "necessary effect of either maintaining identical price quotations to particular customers or of minimizing the amount of price reductions." (Br. p. 27) The only basis advanced for the argument is the quite different stipulated fact—which should have surprised no one—that a defendant had to meet or beat the prices of competitors if it was to sell its containers (F. 25 [App. 496]), and the assumption that when a price was cut to the extent necessary to get the business, it was only a minimal reduction. Plaintiff's argument was rejected by the district court, however, not only because the assumption was unsupported by evidence, but because it was contradicted by the evidence of substantial price cuts, apparently intended to induce the customer not to offer its existing supplier an opportunity to meet the lower prices.

For example, the documentary evidence in this case* shows, with respect to one purchaser in North Carolina, as follows: Container Corporation quoted a price of \$1,068

* Defendants submitted over 1000 documents, stipulated to be a sampling from their files, relating to hundreds of customers and thousands of transactions, which the district court relied upon in finding independent and unrestricted price competition in this industry (F. 19 [App. 492-3]).

plus \$33 setup charge in early January 1960, but on January 13 it lowered its price to meet International's offer of \$959 (DX-33 [Tr. Jan. 27, 1966 p. 227] [App. 176-9]). By March 1961, after Union-Camp had quoted \$858, West Virginia (Hinde & Dauch) had quoted \$850, Container Corporation had quoted \$847 and Crown Zellerbach (Gaylord) had quoted \$839, Carolina took the business at \$801. At that point, the purchasing agent admitted that prices had "dropped to ridiculously low levels" and doubted "that Carolina Container would want repeat business at these prices" (DX-50 [Tr. Jan. 27, 1966 p. 227], [App. 188-9]).*

Of course knowledge as to price alternatives permitted each defendant to make its pricing decisions in the light of this admittedly pertinent market information. The decision in some instances was that the price was already so low that the business was regarded as undesirable, or that a moderate cutting of the competitor's price was warranted in the particular situation, or that the particular defendant should keep or take the business at whatever price reduction it believed necessary to accomplish that result. But the point is that each competitor made its decision individually in the light of its own individual interests.

Plaintiff has conceded that the obtaining of this same price information from sources other than a competitor—although it had the identical effect—did *not* involve a re-

* The inappropriateness of deciding important cases on the basis of asserted inferences is demonstrated when the plaintiff here asks the Court to infer *both* (1) that as a matter of its theory, the defendants must be presumed to have cut competitors' prices only minimally, *and* (2) that the evidence of large price reductions to meet or beat competition proves that prices were so high that they must have been tampered with. This well illustrates the wisdom of the rule that cases should be decided on evidence and not on partisan conjecture.

striction of price competition (Post-Trial Brief, p. 20). But a defendant's freedom of pricing decision was equally unrestrained on those less frequent occasions when price information was obtained from a competitor, for it was stipulated that each defendant in all instances made its own individual pricing decisions, irrespective of whether it obtained price information from a competitor, or from the customer, or from its own records of past sales or, for that matter, had no price information at all.

3. The plaintiff's theories are rebutted by the facts

Plaintiff's "effects" argument is also based on the untenable theory that a supplier is not competing if it meets a competitor's price, and does not cut the price as much as possible at every opportunity. Plaintiff asserts that if a defendant quotes the same price as a competitor, the customer will give him a share of the business at that price (Br. p. 4). That was not the evidence. The evidence was that most purchasers wanted more than one source of supply, and that some purchasers did not accept the offer of the manufacturer making the lowest initial quotation, but afforded other manufacturers an opportunity to meet such lower quotations, and if met, some purchasers *often* divided their purchases among *some* or all of the low quoting manufacturers (F. 24 [App. 496], F. 28 [App. 496-7]).

In addition, the defendants' evidence shows other patterns. When receiving more than one offer at different prices, the purchaser will offer the business to a high bidder only if he will offer a price as low or lower than the lowest bid originally received (F. 25 [App. 496]). Others will give all of a particular order to the lowest bidder and will not permit higher bidders to share the business at the same price (F. 28 [App. 496-7]).

In apparent recognition of the inadequacy of its broad theory to withstand the evidence to the contrary, the plaintiff seems to be limiting its argument to a single situation, to wit, when (i) a defendant decides to bid for the business of another defendant's customer, and (ii) the customer refuses to tell the prospective new bidder the price he most recently paid his current supplier. In that limited circumstance, the plaintiff argues, if a defendant asks the current supplier what its latest price was, the prospective supplier is in a position to meet that price or cut it only minimally, whereas otherwise it would be likely to quote an even lower price.

This theoretical argument fails to take into account the realities of the marketplace as set forth in the stipulated facts and the agreed findings.*

* The real-life operation of one purchasing agent may be helpful in assessing plaintiff's hypothesis that a customer would ask for blind bids: in early 1961, Owens-Illinois was selling this customer a container for \$979. In April 1961, the customer informed St. Joe that Owens-Illinois' price was \$960 and that if St. Joe quoted a competitive price it would split the business. St. Joe met Owens-Illinois' reportedly lower price. Owens-Illinois then had to lower its price to \$960 to be competitive.

In May 1961, the customer informed St. Joe that it had a price of \$925 from Owens-Illinois, and informed Owens-Illinois that St. Joe and Southern had quoted \$925. Owens-Illinois "met" the \$925 price to keep the business, as did St. Joe.

In June 1961, St. Regis submitted a price of \$882. When Owens-Illinois decided to meet St. Regis' price, it was told by the customer that St. Joe had cut the price to \$773, which Owens-Illinois then met.

In July 1961, Container Corporation quoted \$773 and Owens-Illinois quoted \$770. St. Joe took the business at \$770 with a guarantee of that price for the rest of the year.

In January 1962, St. Joe tried to increase its price to \$847 but was told by the customer that Container Corporation had quoted \$770 and guaranteed that price for all of 1962. By June 1962, the price had been cut by Tri-State to \$760 (DX-250 [App. 326-7], 272 [App. 340-1], 283 [App. 352-3], 1000-08 [App. 1020-1] [Tr. Jan. 27, 1966 p. 227]).

How do you get a customer to take business from an established supplier and give it to you at the same price when customers generally will not change suppliers unless offered a lower price? Yet the evidence is that thousands of customers shift suppliers each year because they are offered lower prices by some other defendant. (F. 17 [App. 490], F. 18 [App. 491-2], DX-6 pp. 21-4 [Tr. Jan. 27, 1966 p. 227] [App. Vol. III pp. 21-4])

This evidence destroys the plaintiff's argument predicated on the mistaken assumption that a seller cannot anticipate the competitive advantage which would normally result from a lower price—a larger share of the available business.

The "effects" argument is based on the further misconception that any price a defendant quoted* "was subject to prompt discovery by any competitor upon request." (Br. p. 29) On the contrary, there is literally no evidence that with respect to a customer it had recently sold, any defendant ever asked for price information from a competitor unless the customer itself claimed that the competitor had a lower price and this claim was suspect as to its truth. If the customer received a lower price from a competitor (including a co-supplier to a customer with two or more suppliers) and kept this fact a secret, it would not be discovered by another defendant. The customer could maintain any "degree of uncertainty" it wished merely by not telling one of its suppliers that a co-supplier or a new supplier had quoted a lower price. The reason that the customer would usually reveal this information was that he expected that the high bidder would reduce its price to *or below* that of any competitor.

* As noted above at page 11, at least eight defendants gave information as to prices only on completed sales.

In any event competition often takes the form of meeting the prices of competitors, and a highly competitive industry is one where prices respond promptly to changes in supply and demand and each supplier's price responds promptly to changes in its competitors' prices. "Meeting" thus does not connote stability. So long as pricing decisions are individually made by each defendant, and the initiation of price changes by each defendant remains unrestrained, the prices to any customer will be as unstable as the changing conditions of supply, demand and competition dictate. That was the condition in the corrugated container industry.

4. The plaintiff misreads the district court's opinion

The plaintiff also argues that the district court's decision on this issue was based on its allegedly erroneous holding that "cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices" is not illegal so long as the decision whether or what to bid on a particular order remains 'the individual decision of each defendant' " (Br. p. 27). The plaintiff's argument is then premised on the alleged holding that "there had been 'cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices' " (Br. p. 27). The premise is not supported by the district court's findings of fact; it is false, and so are the conclusions which would be derived from it.

The plaintiff has twisted the district court's statement of the plaintiff's argument so that it would read like a holding of the court itself. What the district court said, at the point cited in the plaintiff's brief, was:

"Plaintiff does not challenge the right of the defendants to obtain and use reliable market information for the purpose of maximizing sales and profits, but *argues* that cooperative and reciprocal action between and among competitors for the purpose of stabilizing prices is to impose undue restraint upon free competition protected by the Sherman Act." (273 F. Supp. at 60 [App. 569]) (emphasis added)

The district court then pointed out that the argument did not take into account the fact, as stipulated by the plaintiff, that each defendant exercised its own business judgment, and made its own individual decision whether to quote higher, lower, or the same price; that there is no evidence that any defendant ever discussed with any other defendant the desirability, the frequency or the consequences of requesting or furnishing, or failing to request or furnish price information, or the action to be taken with respect to such information; and that the freedom of action concededly reserved by each defendant completely refutes the charge that it was the common purpose of the defendants to maintain prices which would be substantially identical with the prices of another, to minimize price reductions, or otherwise make concerted use of any price information after it had been obtained. (273 F. Supp. at 60-61 [App. 569-71])

The *holding* of the district court was very different from what the plaintiff here asserts: the district court held that obtaining price information is not illegal *merely* because it enables the recipient to compete on the basis of fuller market information, and that the plaintiff had proved nothing further.

The district court was clearly correct in holding that the plaintiff had failed to prove its charge that there had been an effect of maintaining substantially identical price quotations to specific customers, or minimizing the amount of price reductions to be offered to such customers. How could this have been established when the plaintiff did not offer proof of any price ever charged? The extensive findings on this score, summarized by the district court in its opinion (273 F. Supp. at 60-61 [App. 569-71]) are never disputed, and never explained away in plaintiff's brief.

5. Plaintiff's "economic" argument as to effect has no record foundation

How will a seller price his product if he is unaware of the price his customer has previously paid another supplier? The plaintiff assumes that he will quote a price based on cost and a "satisfactory profit." (Br. p. 28) The district court on the other hand found, on the basis of the facts, that when competing in ignorance of competitive prices, there was a tendency to quote too high. Only a public utility, insulated from competition but regulated to prevent gouging, can price as the government suggests. Moreover, what is cost and what is a satisfactory profit? In this industry, not only do costs vary from plant to plant, but in each plant each additional order which increases production as a percentage of capacity reduces unit cost. Is cost the marginal cost for the additional production, or the average cost for the plant's entire production? Is a 5% profit "satisfactory" in normal times or is it sometimes 1% or less or even a small loss if that is necessary to keep the plant going? The plaintiff offered no proof and now simply avoids these questions, ignoring the fact that each company's pricing, both here and for any

commodity readily available from other suppliers, must be based on competition and cannot be determined by cost and a "satisfactory profit."

One of the defendants, Crown Zellerbach, once attempted to do what the plaintiff urges. It published a price list and instructed its personnel to sell all its products at precisely list price. The result was that competitors knew they could take the business away from Crown by quoting a lower price, and they did so. Crown lost so much business in an experiment of several months duration with this plan that it had to abandon it, and return to pricing by meeting or beating competition, rather than on any basis of cost plus a satisfactory profit. (CX-7, pp. A 704-5 [Tr. Jan. 26, 1966 p. 138] [App. 903-4])

6. Knowledge as to price alternatives is not inherently anticompetitive

The plaintiff's theory is this: Whether by agreement or infrequent casual practice, and whatever the motive, when a trader learns the price at which a competitor most recently sold his product, the Sherman Act is violated because, with that information, his admittedly independent pricing decision might be different from what it would be in a state of ignorance, and this is an unlawful effect.

Thus, if one grocer reads the newspaper advertisements of his competitor across the street and learns that there is a special on eggs, he might charge a different price for his eggs than if this information were not available to him. The effect is no different if there is no advertisement but he learns his competitor's price from a customer; nor is it different if he telephones his competitor to check on the price reported to him by a customer who is known to him

often to claim falsely that the prices in other stores are lower.

The same is true of information as to any economic factors which would influence his pricing decision, such as the general level of industrial activity, the rate of unemployment, freight carloadings (which are particularly relevant for a manufacturer of shipping cartons) and general price trends in his and other industries. Is all such information anticompetitive or, as this Court has pointed out, does not free competition work best when the traders in the marketplace are best informed? For there should be no mistake about the central issue here. The plaintiff is asserting the *per se* illegality of knowledge, in the absence of any agreement, understanding or practice whereby the freedom of the individual trader is restricted in any fashion, and where each pricing decision by each trader was admittedly made as a matter of its own individual decision after taking into account all of the relevant economic factors upon which such a decision should properly be based.

The clue to the fallacy of the plaintiff's thinking is its assertion that a trader, ignorant of the price at which competitors have recently sold their product (a fact which the purchasers, of course, know), might offer his own product at a lower price. The district court found, on the evidence, that in fact in this industry a defendant often offered his product at a higher price when he did not know what others had last charged (F. 19(e) [App. 493]). But what has this to do with a complaint alleging an agreement to restrict competition? It is not enough to argue that information as to competitors' recent prices *could* be part of the mechanics for implementation of an arrangement to restrict price competition. That mere possibility does not

prove an agreement in restraint of trade, particularly in the context of the contrary findings of the district court here.

Why should not information as to prices for corrugated containers remain as freely available as for commodities traded on various commodity exchanges? Or in other industries where prices are posted or otherwise freely disseminated? What peculiarly requires that a seller of corrugated containers compete in ignorance of information that the buyer already possesses? For it is the mere receipt of knowledge which is on trial here, and not any agreement to use that knowledge to restrict competition or any evidence that any defendant in any way tempered the vigor of competition.

The lower court's findings of fact were based upon stipulated or uncontroverted facts agreed to by the plaintiff. Upon that record we submit that the district court quite properly followed this Court's decisions and correctly refused to announce a new rule of law in the absence of factual foundation for it. The plaintiff had every opportunity to develop such a factual premise and was unable to do so. It should not be heard to ask this Court to pronounce a novel and far-reaching doctrine in disregard of the guidelines so carefully laid down in the *White Motors* case.

Conclusion

The judgment below should be affirmed.

Dated: November 2, 1968

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 27.—OCTOBER TERM, 1968.

United States, Appellant, v. Container Corporation of America et al.	} On Appeal from the United States District Court for the Middle District of North Carolina.
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[January 14, 1969.]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is a civil antitrust action charging a price-fixing agreement in violation of § 1 of the Sherman Act.¹ 15 U. S. C. § 1, 26 Stat. 209. The District Court dismissed the complaint. 273 F. Supp. 18. The case is here on appeal, 15 U. S. C. § 29; and we noted probable jurisdiction. 390 U. S. 1022.

The case as proved is unlike any other price decisions we have rendered. There was here an exchange of price information but no agreement to adhere to a price schedule as in *Sugar Institute v. United States*, 297 U. S. 553, or *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150. There was here an exchange of information concerning specific sales to identified customers, not a statistical report on the average cost to all members, without identifying the parties to specific transactions, as in *Maple Flooring Mfgs. Assn v. United States*, 268 U. S. 63. While there was present here, as in *Cement Manufacturers Protective Assn. v. United States*, 268 U. S. 588, an exchange of prices to specific customers, there was absent the controlling circumstance, viz., that

¹ Section 1 provides:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

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cement manufacturers, to protect themselves from delivering to contractors more cement than was needed for a specific job and thus receiving a lower price, exchanged price information as a means of protecting their legal rights from fraudulent inducements to deliver more cement than needed for a specific job.

Here all that was done was a request by each defendant from its competitor for information as to the most recent price charged or quoted, whenever it needed such information and whenever it was not available from another source. Each defendant on receiving that request usually furnished the data with the expectation that he would be furnished reciprocal information when he wanted it.² That concerted action is of course sufficient to establish the combination or conspiracy, the initial ingredient of a violation of § 1 of the Sherman Act.

There was of course freedom to withdraw from the agreement. But the fact remains that when a defendant requested and received price information, it was affirming its willingness to furnish such information in return.

There was to be sure an infrequency and irregularity of price exchanges between the defendants; and often the data was available from the records of the defendants or from the customers themselves. Yet the essence of the agreement was to furnish price information whenever requested.

Moreover, although the most recent price charged or quoted was sometimes fragmentary, each defendant had the manuals with which it could compute the price charged by a competitor on a specific order to a specific customer.

² This is obviously quite different from the parallel business behavior condoned, in *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U. S. 537.

Further, the price quoted was the current price which a customer would need pay in order to obtain products from the defendant furnishing the data.

The defendants account for about 90% of the shipment of corrugated containers from plants in the southeastern United States. While containers vary as to dimensions, weight, color, and so on, they are substantially identical, no matter who produces them, when made to particular specifications. The prices paid depend on price alternatives. Suppliers when seeking new or additional business or keeping old customers, do not exceed a competitor's price. It is common for purchasers to buy from two or more suppliers concurrently. A defendant supplying a customer with containers would usually quote the same price on additional orders, unless costs had changed. Yet where a competitor was charging a particular price, a defendant would normally quote the same price or even a lower price.

The exchange of price information seemed to have the effect of keeping prices within a fairly narrow ambit. Capacity has exceeded the demand from 1955 to 1963, the period covered by the complaint, and the trend of corrugated container prices has been downward. Yet despite this excess capacity and the downward trend of prices, the industry has expanded in the Southeast from 30 manufacturers with 49 plants to 51 manufacturers with 98 plants. An abundance of raw materials and machinery makes entry into the industry easy with an investment of \$50,000 to \$75,000.

The result of this reciprocal exchange of prices was to stabilize prices though at a downward level. Knowledge of a competitor's price usually meant matching that price. The continuation of some price competition is not fatal to the Government's case. The limitation or reduction of price competition brings the case within the

ban, for as we held in *United States v. Socony Vacuum Oil Co.*, *supra*, at 224, n. 59, interference with the setting of price by free market forces is unlawful *per se*. Price information exchanged in some markets may have no effect on a truly competitive price. But the corrugated container industry is dominated by relatively few sellers. The product is fungible and the competition for sales is price. The demand is inelastic, as buyers place orders only for immediate, short-run needs. The exchange of price data tends toward price uniformity. For a lower price does not mean a larger share of the available business but a sharing of the existing business, at a lower return. Stabilizing prices as well as raising them is within the ban of § 1 of the Sherman Act. As we said in *United States v. Socony Vacuum Oil Co.*, *supra*, at 223, "in terms of market operations, stabilization is but one form of manipulation." The inferences are irresistible that the exchange of price information has had an anticompetitive effect in the industry, chilling the vigor of price competition. The agreement in the present case, though somewhat casual, is analogous to *American Column & Lumber Co. v. United States*, 257 U. S. 377; *United States v. American Linseed Oil Co.*, 262 U. S. 371.³

³ The *American Column* case was a sophisticated and well supervised plan for the exchange of price information between competitors with the idea of keeping prices reasonably stable and of putting an end to cut-throat competition. There were no sanctions except financial interest and business honor. But the purpose of the plan being to increase prices, it was held to fall within the ban of the Sherman Act.

Another elaborate plan for the exchange of price data among competitors was involved in *American Linseed Oil*; and informal sanctions were used to establish "modern cooperative business methods." The arrangement was declared illegal because of its "necessary tendency" was to suppress competition. 262 U. S., at 389.

Price is too critical, too sensitive a control to allow it to be used even in an informal manner to restrain competition.⁴

Reversed.

⁴Thorstein Veblen in *The Theory of Business Enterprise* (1904) makes clear how the overabundance of a commodity creates a business appetite to regulate or control prices or output or both. Measures short of monopoly may have "a salutary effect," as for example a degree of control or supervision over prices not obtainable while the parties "stood on their old footing of severalty." But that relief is apt to be "only transient," for as the costs of production decline and growth of the industry "catches up with the gain in economy," the need for further controls or restraints increase. And so the restless, never-ending search for price control and other types of restraint.

We held in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, that all forms of price fixing are *per se* violations of the Sherman Act.

"The elimination of so-called competitive evils is no legal justification for such buying programs. The elimination of such conditions was sought primarily for its effect on the price structures. Fairer competitive prices, it is claimed, resulted when distress gasoline was removed from the market. But such defense is typical of the protestations usually made in price-fixing cases. Ruinous competition, financial disaster, evils of price-cutting and the like appear throughout our history as ostensible justifications for price-fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case. In that event the Sherman Act would soon be emasculated; its philosophy would be supplanted by one which is wholly alien to a system of free competition; it would not be the charter of freedom which its framers intended." 310 U. S. 220-221.

SUPREME COURT OF THE UNITED STATES

No. 27.—OCTOBER TERM, 1968.

United States, Appellant,	}	On Appeal from the United
v.		States District Court for
Container Corporation of		the Middle District of
America et al.		North Carolina.

[January 14, 1969.]

MR. JUSTICE FORTAS, concurring.

I join in the judgment and opinion of the Court. I do not understand the Court's opinion to hold that the exchange of specific information among sellers as to price charged to individual customers, pursuant to mutual arrangement, is a *per se* violation of the Sherman Act.

Absent *per se* violation, proof is essential that the practice resulted in an unreasonable restraint of trade. There is no single test to determine when the record adequately shows an "unreasonable restraint of trade"; but a practice such as that here involved, which is adopted for the purpose of arriving at determination of prices to be quoted to individual customers, inevitably suggests the probability that it so materially interfered with the operation of the price mechanism of the marketplace as to bring it within the condemnation of this Court's decisions. Cf. *Sugar Institute, Inc. v. United States*, 297 U. S. 553 (1936); *American Column & Lumber Co. v. United States*, 257 U. S. 377 (1921).

Theoretical probability, however, is not enough unless we are to regard mere exchange of current price information as so akin to price fixing by combination or conspiracy as to deserve the *per se* classification. I am not prepared to do this, nor is it necessary here. In this case, the probability that the exchange of specific price information led to an unlawful effect upon prices is adequately

buttressed by evidence in the record. This evidence, although not overwhelming, is sufficient in the special circumstances of this case to show an actual effect on pricing and to compel us to hold that the court below erred in dismissing the Government's complaint.

In summary, the record shows that the defendants sought and obtained from competitors who were part of the arrangement information about the competitors' prices to specific customers. "In the majority of instances," the District Court found, once a defendant had this information he quoted substantially the same price as the competitor, although a higher or lower price would "occasionally" be quoted. Thus the exchange of prices made it possible for individual defendants confidently to name a price equal to that which their competitors were asking. The obvious effect was to "stabilize" prices by joint arrangement—at least to limit any price cuts to the minimum necessary to meet competition. In addition, there was evidence that, in some instances, during periods when various defendants ceased exchanging prices exceptionally sharp and vigorous price reductions resulted.

On this record, taking into account the specially sensitive function of the price term in the antitrust equation, I cannot see that we would be justified in reaching any conclusion other than that defendants' tacit agreement to exchange information about current prices to specific customers did in fact substantially limit the amount of price competition in the industry. That being so, there is no need to consider the possibility of a *per se* violation.

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[January 14, 1969.]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE HARLAN and MR. JUSTICE STEWART join, dissenting.

I agree with the Court's holding that there existed an agreement among the defendants to exchange price information whenever requested. However, I cannot agree that that agreement should be condemned, either as illegal *per se*, or as having had the purpose or effect of restricting price competition in the corrugated container industry in the Southeastern United States.

Under the antitrust laws, numerous practices have been held to be illegal *per se* without regard to their precise purpose or harm. As this Court said in *Northern Pacific Railway Co. v. United States*, 356 U. S. 1, 5 (1958), "there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Among these practices are price fixing, *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 223 (1940); division of markets, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271 (C. A. 6th Cir. 1898), *aff'd*, 175 U. S. 211 (1899); group boycotts, *Fashion Originators' Guild v. FTC*, 312 U. S. 457 (1941); and tying arrangements, *International Salt Co. v. United States*, 332 U. S. 392 (1947). We have recently added to this list certain sales commission systems for the

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marketing of tires, batteries, and accessories by service stations affiliated with major oil companies. *FTC v. Texaco, Inc.*, — U. S. — (1968). This Court has refused to apply a *per se* rule to exchanges of price and market information in the past. See *American Column & Lumber Co. v. United States*, 257 U. S. 377 (1921); *United States v. American Linseed Oil Co.*, 262 U. S. 371 (1923); *Maple Flooring Mfrs. Ass'n v. United States*, 268 U. S. 563 (1925); *Cement Mfrs. Protective Ass'n v. United States*, 268 U. S. 588 (1925). I believe we should follow the same course in the present case.

Per se rules always contain a degree of arbitrariness. They are justified on the assumption that the gains from imposition of the rule will far outweigh the losses and that significant administrative advantages will result. In other words, the potential competitive harm plus the administrative costs of determining in what particular situations the practice may be harmful must far outweigh the benefits that may result. If the potential benefits in the aggregate are outweighed to this degree, then they are simply not worth identifying in individual cases.

I do not believe that the agreement in the present case is so devoid of potential benefit or so inherently harmful that we are justified in condemning it without proof that it was entered into for the purpose of restraining price competition or that it actually had that effect. The agreement in this case was to supply, when requested, price data for identified customers. Each defendant supplied the necessary information on the expectation that the favor would be returned. The nature of the exchanged information varied from case to case. In most cases, the price obtained was the price of the last sale to the particular customer; in some cases, the price was a current quotation to the customer.

In all cases, the information obtained was sufficient to inform the defendants of the price they would have to beat in order to obtain a particular sale.

Complete market knowledge is certainly not an evil in perfectly competitive markets. This is not, however, such a market, and there is admittedly some danger that price information will be used for anticompetitive purposes, particularly the maintenance of prices at a high level. If the danger that price information will be so used is particularly high in a given situation, then perhaps exchange of information should be condemned.

I do not think the danger is sufficiently high in the present case. Defendants are only 18 of the 51 producers of corrugated containers in the Southeastern United States. Together, they do make up 90% of the market and the six largest defendants do control 60% of the market. But entry is easy; an investment of \$50,000 to \$75,000 is ordinarily all that is necessary. In fact, the number of sellers has increased from 30 to the present 51 in the eight-year period covered by the complaint. The size of the market has almost doubled because of increased demand for corrugated containers. Nevertheless, some excess capacity is present. The products produced by defendants are undifferentiated. Industry demand is inelastic, so that price changes will not, up to a certain point, affect the total amount purchased. The only effect of price changes will be to reallocate market shares among sellers.

In a competitive situation, each seller will cut his price in order to increase his share of the market, and prices will ultimately stabilize at a competitive level—i. e., price will equal cost, including a reasonable return on capital. Obviously, it would be to everyone's benefit to avoid such price competition and maintain prices at a higher level, with a corresponding increase in profit. In a market with very few sellers, and detailed

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knowledge of each other's price, such action is possible. However, I do not think it can be concluded that this particular market is sufficiently oligopolistic, especially in light of the ease of entry, to justify the inference that price information will necessarily be used to stabilize prices. Nor do I think that the danger of such a result is sufficiently high to justify imposing a *per se* rule without actual proof.

In this market, we have a few sellers presently controlling a substantial share of the market. We have a large number competing for the remainder of the market, also quite substantial. And total demand is increasing. In such a case, I think it just as logical to assume that the sellers, especially the smaller and newer ones,¹ will desire to capture a larger market share by cutting prices as it is that they will acquiesce in oligopolistic behavior. The likelihood that prices will be cut and that those lower prices will have to be met acts as a deterrent to setting prices at an artificially high level in the first place. Given the uncertainty about the probable effect of an exchange of price information in this context, I would require that the Government prove that the exchange was entered into for the purpose of or that it had the effect of restraining price competition.

I don't find the inference that the exchange of price information has had an anticompetitive effect as "irresistible" as does the Court. Like my Brother FORTAS, I would prefer that a finding of anticompetitive effect be supported by "evidence in the record." I can't agree that the evidence in this case was sufficient to prove such an effect. The Government has simply not proved its case.

¹ The record does not indicate whether all manufacturers engaged in exchange of price information, or whether the practice was limited to defendants. There is no indication that other manufacturers would not have been given price information had they requested it.

The Court does not hold that the agreement in the present case was a purposeful attempt to stabilize prices. The evidence in the case, largely the result of stipulation, would not support such a holding. The Government points to a few isolated statements found in the depositions of industry witnesses, but I find these few fragmentary references totally insufficient. The weight of the evidence in the present case indicates that the price information was employed by each defendant on an individual basis, and was used by that defendant to set his prices for a specific customer; ultimately each seller wanted to obtain all or part of that customer's business at the expense of a competitor. The District Court found that there was no explicit agreement among defendants to stabilize prices and I do not believe that the desire of a few industry witnesses to use the information to minimize price cuts supports the conclusion that such an agreement was implicit. On the contrary, the evidence establishes that the information was used by defendants as each pleased and was actually employed for the purpose of engaging in active price competition.

Nor do I believe that the Government has proved that the exchange of price information has in this case had the necessary effect of restraining price competition.² In its brief before this Court, the Government relies very largely on one finding of the District Court and upon economic theory. The Government has presented a convincing argument in theoretical terms. However, the evidence simply does not square with that theory. And, this is not a case in which it would be unduly difficult to demonstrate anticompetitive effects.

² Here, it is relevant to note again that the evidence was largely the result of stipulation, with the Government admittedly introducing very little evidence on the actual effect of the allegedly illegal practice.

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The record indicates that defendants have offered voluminous evidence concerning price trends and competitive behavior in the corrugated container market. Their exhibits indicate a downward trend in prices, with substantial price variations among defendants and among their different plants. There was also a great deal of shifting of accounts. The District Court specifically found that the corrugated container market was highly competitive and that each defendant engaged in active price competition. The Government would have us ignore this evidence and these findings, and assume that because we are dealing with an industry with overcapacity and yet continued entry, the new entrants must have been attracted by high profits. The Government then argues that high profits can only result from stabilization of prices at an unduly high level. Yet, the Government did not introduce any evidence about the level of profits in this industry, and no evidence about price levels. Not one customer was called, although the Government surely had ample access to defendants' customers. The Government admits that the price trend was down, but asks the Court to assume that the trend would have been accelerated with less informed, and hence more vigorous, price competition.³ In the absence of any proof whatsoever, I cannot make such an assumption. It is just as likely that price competition was furthered by the exchange as it is that it was depressed.

Finally, the Government focuses on the finding of the District Court that in a majority of instances a defendant,

³ There was no effort to demonstrate that the price behavior of those manufacturers who didn't exchange price information, if any, varied significantly from the price behavior of those who did. In fact, several of the District Court's findings indicate that when certain defendants stopped exchanging price information, their price behavior remained essentially the same, and, in some cases, prices actually increased.

when it received what it considered reliable price information, would quote or charge substantially the same price.⁴ The Court and my Brother FORTAS also focus on this finding. Such an approach ignores, however, the remainder of the District Court's findings. The trial judge found that price decisions were individual decisions, and that defendants frequently did cut prices in order to obtain a particular order.⁵ And, the absence of any price parallelism or price uniformity and the downward trend in the industry undercuts the conclusion that price information was used to stabilize prices.⁶

The Government is ultimately forced to fall back on the theoretical argument that prices would have been more unstable and would have fallen faster without price information. As I said earlier, I cannot make this assumption on the basis of the evidence in this record. The findings of the Court below simply do not indicate that the exchange of information had a significant anti-competitive effect; if we rely on these findings, at worst all we can assume is that the exchange was a neutral factor in the market.⁷ As this Court said in *Maple Flooring, supra*, at 585: "[w]e realize that such information, gathered and disseminated among the members of a trade or business, may be the basis of agreement or concerted action to . . . raise prices beyond the levels . . .

⁴ It should be noted that, in most cases, this information was obtained from a customer rather than a competitor, a practice the Government does not condemn.

⁵ Immediately following the particular sentence emphasized by the Government, there appears the finding that "[i]n many instances, however, depending upon particular circumstances, each defendant quoted lower or higher prices, and in all instances the determination as to the price to be charged or quoted was its individual decision." Other findings of fact are to the same effect.

⁶ As mentioned above, no evidence was introduced that would indicate that more than minimal price cuts were economically feasible.

⁷ See note 3, *supra*.

which would prevail if no such agreement or concerted action ensued and those engaged in commerce were left free to base individual initiative on full information of the essential elements of their business." However, here, as in *Maple Flooring*, the Government has not proved that the information was so used. Rather, the record indicates that, while each defendant occasionally received price information from a competitor, that information was used in the same matter as other reliable market information—i. e., to reach an individual price decision based upon all available information. The District Court's findings that this was a competitive industry, lacking any price parallelism or uniformity, effectively refute the Government's assertion that the result of those decisions was to maintain or tend to maintain prices at other than a competitive level. Accordingly, I would affirm the decision of the court below.